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Legal Analysis of Unpaid Loss Insurance Claims Against Rental Cars

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Abstract

A loss insurance claim is a form of the insured's right to demand compensation for an insurance object that experiences an event, namely an uncertain event, it can be an accident, damages that have been stated in the policy, even fatally the insurance object is lost. Submitting an insurance claim for the insured must first complete the requirements for filing a loss insurance claim such as the necessary documents, facts that actually occurred at the scene of the case where all of these requirements can be seen in the policy.The purpose of this study is to find out how the form of a loss insurance policy for rental cars is, how to submit a loss insurance claim against rental cars, and how to analyze the law of unpaid loss insurance claims against rental cars. To achieve the research objectives, a juridical research was conducted, namely data analysis that revealed and retrieved the truth obtained from the literature by combining regulations, scientific books that had to do with the "title". Then it is analyzed qualitatively so that it gets a problem solving and a conclusion can be drawn. Based on the research results, It is understood that the loss insurance claim that is not paid for the rental car is due to the dishonesty of the insured against the insurer at the time of entering into the insurance agreement. The insurance agreement made between the insured and the insurer is a loss insurance agreement for a private car, the object of which must be used in accordance with its form as a private car that is not used as a rental car. The basic principle in this insurance agreement is the principle of honesty and goodwill between the insured and the insurer. As is the case with agreements in general, insurance agreements are subject to 4 (four) important principles for the validity of an agreement according to the Civil Code, namely the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, and the principle of good faith. Due to the intentional element of the insured party to benefit from the insured car by means of rental, therefore, the insurance party cannot compensate for the insured object and the insured party has violated the principle of the agreement which resulted in the agreement being void.

Keywords: Insurance, Car, Rental

A. Introduction

Currently, human business activities in the field of transportation are increasingly taking various forms, starting from public transportation such as mini buses, city transportation to inter-cross transportation, all of which have very large risks. To anticipate the risks that arise from these businesses and activities, a company that can bear the risks arising from these businesses and activities was born, namely an insurance company.

Insurance is a system or action to delegate, transfer, or transfer the risk borne to another party on condition that premium payments are made regularly within a certain timeframe in exchange for a policy that guarantees protection against risks that may occur in the future along with the uncertainty itself.[1]With the development of the times, the mindset of humans is getting more advanced, there are many illegal transportation services that do not have a permit to become a transportation car that operates as a transportation car such as a rental car.

A rental car in this case is a private car that is rented to a tenant who is not supposed to be a transportation car, therefore the rental car owner in running his business does not want to bear a risk such as an accident and even the fatality of the car being rented is lost, so the rental car owner insures the vehicle rent to the insurance company. The owner of the rental car intends to insure this rental car if an unexpected event or event occurs, the insured party will receive compensation from the insurer, whether the car has an accident or is lost.

If the insured car has an accident or loss in submitting a claim, it must follow all the processes that have been stated in the insurance policy and the procedures in the insurance company.

The procedure carried out by insurance is that the insurance company will ask for the documents needed for the case of the loss of the motor vehicle, including:[2]

1. Completed claim form.
2. Police report from the Polsek/Police in charge of the crime scene (TKP).
3. BPKB.
4. Original purchase invoice from Brand Holder Sole Agent (ATPM).
5. Blank receipt with triple stamps.
6. VEHICLE REGISTRATION.
7. Contact lock.
8. Block letter from the local Police Traffic Directorate.

These things must be completed by the insured so that the claim they submit is not rejected by the insurer while the insurer also conducts a survey of the incident. If there are new developments that occur at the scene of the case when the insurer conducts a survey, the contents of the initial agreement are personal car insurance not to be commercialized or take advantage of the car. If this is proven in the investigation process to violate the contents of the agreement, the loss insurance claim is canceled by the insurer.

This cancellation is a polemic between the two parties, the insured party feels aggrieved because the claim submitted is rejected and is not paid by the insurance, this can be done by the insurer because insurance has a principle called Utmost Good Faith. as a customer, it is obligatory to inform carefully and clearly about important facts related to the object being insured.[3]If this is not adhered to by the insured, neither the agreement nor the claim submitted by the insured will be paid by the insurer.

The cancellation of the insurance agreement against the rental car is a result of the dishonesty of the insured party to the insurer. So it is tried to further explore how

[1]Zian Farodis. 2014. Smart Insurance Book. Jogjakarta: Laksana, page 11
[2]Sigma. 2011. Smart Kick Insurance- So that you are calm, safe, and comfortable. Yogyakarta: Gmedia, page 166
[3]Ibid., page 150

the cancellation can be carried out by the insurer on the commercialized insurance object by analyzing the clauses contained in the policy and the principles in the loss insurance agreement.

B. Methods

The data research method that is in accordance with descriptive research is to use a qualitative approach, namely data analysis that reveals and retrieves the truth obtained from the literature by combining regulations, scientific books that have to do with "titles". Then it is analyzed qualitatively so that it gets a solution, so that a conclusion can be drawn.

C. Results and Discussion

As is the case with agreements in general, insurance agreements are subject to 4 (four) important principles for the validity of an agreement according to the Civil Code, namely the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, and the principle of good faith.

1. Principle of Freedom of Contract

The principle of freedom of contract is contained in Article 1338 paragraph (1) of the Civil Code which states that "all agreements made legally apply as law for those who make them". This principle explains that all agreements made legally, apply as law for those who make them. However, this freedom is not an unlimited freedom as the provisions regarding the limitations of freedom in making an agreement as stated in Article 1337 of the Civil Code which reads, A cause is prohibited, if it is prohibited by law or is contrary to good or bad decency. public order.

As for what these articles mean, it is nothing but a statement that every agreement is binding on both parties and from this provision it can be concluded that the parties are free to make any kind of agreement, as long as it does not violate public order or morality. According to this understanding, not only are the parties free to make any kind of agreement, as long as they do not violate public order as regulated in a special section of Book III, but in general they are also allowed to override the regulations contained in that Book III. In other words, the regulations stipulated in Book III of the Civil Code are only provided in the event that the contracting parties do not make their own regulations, so the regulations in Book III,[4]

The parties to the insurance agreement, according to the above provisions can cover insurance according to the needs and abilities of each party, although it is not an unlimited freedom. Therefore, the coverage of one insurance agreement with another can contain a large difference, even though the agreement is for the same type and object of insurance.

2. Principles of Consensualism

The principle of consensualism is regulated in Article 1320 of the Civil Code, paragraph (2), that is, they agree to bind themselves. The agreement of those who bind themselves is an essential principle of the Covenant Law. This principle is also known

[4]A. Junaidi Ganie. 2013. Indonesian Insurance Law. Jakarta: Sinar Graphic, page 58.

as the principle of consensual autonomy, which determines the existence (raison d'etre, het bestaanwaarde) of an agreement and is something that does not only belong to the Civil Code but is universal. A number of experts argue that the agreement is formed because of the will (consensus) of the parties. Agreements can basically be made free, not bound by form and reached not formally but simply through mere consensus.[5]

3. Pacta Sunt Servanda Principle

The provisions of Article 1338 paragraph (1) of the Civil Code states that all agreements made legally apply as law for those who make them contain two legal principles for the validity of an agreement, namely the principle of freedom of contract and the principle of pacta sunt servanda.

According to the principle of pacta sunt servanda, an agreement results in a legal obligation and the parties are bound to carry out the contractual agreement, and that an agreement must be fulfilled, by the parties which applies as law. Social life is only possible if one can trust the words of others. Science is unlikely to be able to provide more explanation than that, except that a contract is binding because it is a promise, similar to a law because the law is seen as an order from the legislator.[6]

The fulfillment of the obligations that have been agreed even though the insurance policy has not been issued when the claim arises reflects the principle of pacta sunt servanda in Article 1338 of the Civil Code in insurance practice.

4. Good Faith Principle

In agreement 1338 paragraph (3) of the Civil Code, there is a provision that an agreement must be carried out in good faith. Mariam Darus Badrulzaman sees paragraph (3) of the Civil Code as a counterbalance to the provisions of paragraph (1) to provide protection for the weaker party so that the position of the parties is balanced. This is the realization of the principle of balance. An insurance policy is prepared by the insurer for the insured who generally has limited insurance knowledge which can make the insured a weak party.[7]

The agreement has a number of aspects, namely the actions of the parties, the contents of the agreement and the implementation of what has been agreed. The actions of the parties are legal actions that are shown to have legal consequences, namely regarding the statement of the will and the authority to act to create, change and end a certain legal relationship. The act must not be sourced from the imperfect state of one's soul. The contents of the agreement are what is expressly agreed upon or tacitly agreed upon unless the legal action in question is contrary to the rules which are categorized as coercive law. The contents of the agreement contain the principle of freedom of contract as long as it does not conflict with the law, good morals and public order.[8]

Limitations that are generally attached to one party in binding themselves in an insurance agreement are protected from the principle of good faith which is a balancing principle to provide protection for weak parties. In insurance law, the applicable principle is even higher than just the principle of good faith but the principle of very

[5]Ibid., page 59
[6]Ibid., page 60
[7]Ibid., page 61
[8]Ibid., page 62

good faith (utmost good faith) which requires a higher principle of openness which if violated should contain harsh sanctions.

The principle of perfect honesty (utmost good faith) is that you, as a customer, are obligated to give accurate and clear information about the object being insured. The principle of good faith underlies the insurance contract agreement between the insured and the insurance company, therefore both parties must adhere to it. Fill in the SPPA/SPAJ honestly, well, and correctly so that there is no fraudulent information (wrong information) that can cause your claim not to be paid by the insurance company.[9]

This principle explains the risks that are guaranteed and excluded, all terms and conditions of coverage in a clear and thorough manner. The obligation to provide such important facts applies:[10]

a) Since the agreement regarding the insurance agreement is discussed until the insurance contract is completed, that is, when the insurance party agrees to the contract.
b) At the time of renewal of the insurance contract.
c) When there are changes to the insurance contract and regarding matters relating to those changes.

This principle is very important, because:

a) In general, the insured knows more fully the object to be insured than the insurer.
b) The calculation of the amount of the premium is strongly influenced by the burden of risk.

The facts that must be disclosed by the insured, among others:

a) The situation and condition of the object internally (construction, existing goods, etc.).
b) As well as external (surrounding environment), such as:
    1) Claims experience ever.
    2) Previous insurance closing experience.
    3) Other known technical rules.

The obligation to be honest does not only apply to the insured, but also to the insurer. Facts that must be disclosed by the insurer (through the agent), include:

a) Describe the risks covered and their exceptions.
b) Inform the amount of premium in accordance with regulations.
c) Provide an explanation of the claim procedure.
d) Other necessary information.

Violations of the utmost good faith principle, among others:

1) Statements or statements that are wrong but not on purpose.
2) False statements or statements made intentionally for profit.
3) Not using facts or not telling the other party things that are needed, not on purpose, but maybe because of ignorance or forgetfulness.
4) Concealing information or facts intentionally for profit.

Examples of violations of the utmost good faith principle include:

a) Submit a fictitious insurance claim.

[9]Sigma, Op. Cit., page 150
[10]Ibid.

b) Increase the number of requests for compensation by deliberately manipulated engineering.
c) Insuring vulnerable insurance objects with information that is different from the existing reality.

Reactions to violations that occur can take the form of:

a. Deems null and void an existing insurance contract or agreement:
    1) Assume that there is absolutely no contract from the start.
    2) Disclaim responsibility for claims.
b. Prosecuting a party who intentionally harms another party.
c. Assuming there was no breach and continuing the insurance contract.[11]

As stated in several previous explanations, that basically insurance is an agreement, then at the same time, the existence of such insurance can also be threatened with the risk of being canceled or it can be canceled if it is proven that it does not meet the legal requirements of the agreement. Among the things that can cause the cancellation of the insurance, among others, are:[12]

a) Contains a statement that is not true or false, or it could be if the insured party did not provide complete information, or it could also be understood that he did not disclose things he knew so that if it was conveyed to the insurer, it would result in the insurance agreement not being closed (Article 251 Commercial Code).
b) Contains a loss that existed before the insurance agreement was agreed or signed (Article 269 of the Commercial Code).
c) Contains a stipulation that the insured with notification through the channel frees the insurer from all forms of his obligations in the future (Article 272 of the Commercial Code).
d) There is a clever deception, fraud, or it could be fraud by the insured party (Article 282 of the Commercial Code).
e) The insured object based on the regulations contained in the applicable law is apparently not allowed to be traded (Article 599 of the Commercial Code).

Based on the explanation above, it is very clear that the basic principle of this insurance agreement is the principle of good faith (utmost good faith), the insured and the insurer in making an agreement must have good faith, so that in the course of insurance the insurance object does not cause a dispute, in terms of making an insurance agreement. the insured party must provide the best possible explanation of the insurance object to be insured against the insurer so that the insurer understands what insurance will be used for the insurance object, but this is ignored by the insured party.

Due to the dishonesty of the insured, the loss insurance claim submitted by the insured party is not paid by the insurer against the lost insurance object, because the insured has violated the contents of the insurance agreement that has been made, in this case the insured at the time of making the insurance agreement insures his car as a private car not to be used as a rental car, where the insured by renting this car benefits.

[11]Ibid., page 152
[12]Zian Farodis., Op. Cit., page 43

In this case, an insurance claim for loss is not paid by the insurer against the object of the insurance, this can be seen in Article 282 of the Commercial Code which states that there is an ingenious deception, fraud, or it could be fraud committed by the insured.

5. Discussion

The form of the contract can be divided into two types, namely written and oral. A written agreement is an agreement made by the parties in written form. While an oral agreement is an agreement made by the parties in oral form (enough agreement of the parties).

There are three forms of written agreement, as stated below:[13]

1. An underhand agreement signed by the parties concerned only. The agreement only binds the parties to the agreement, but does not have the power to bind third parties. In other words, if the agreement is denied by a third party, the parties or one of the parties to the agreement are obliged to submit the necessary evidence to prove that the third party's objection is unfounded and cannot be justified.
2. Agreement with a notary witness to legalize the signatures of the parties. The function of a notary's testimony on a document is solely to legalize the authenticity of the signatures of the parties. However, the testimony does not affect the legal force of the contents of the agreement. One of the parties may deny the contents of the agreement. However, the party who denies it is the party who must prove his denial.
3. An agreement made before and by a notary in the form of a notarial deed. A notarial deed is a deed made before and in front of an authorized official for that purpose. The authorized officials for this are notaries, sub-district heads, PPAT, and others. This type of document is the perfect evidence for the parties concerned as well as third parties.

Based on the explanation of the form of the contract or agreement above, the form of the insurance agreement is a form of written agreement in accordance with the provisions contained in Article 255 of the Commercial Code, it is stated that the insurance agreement should be made in writing in the form of a deed which is then referred to as a policy, whose existence contains regarding agreements, special conditions, and special promises which are then used as the basis for fulfilling the rights as well as obligations of the parties bound therein, namely, the insurer and the insured in order to achieve insurance objectives. Thus, it can be understood that an insurance policy is a written evidence regarding the occurrence of an insurance agreement between the insurer and the insured. It was then hinted at the function of the policy, namely as written evidence. Therefore, it has become a necessity then for the parties, especially for the customer as the insured party, to pay serious attention to matters relating to the clarity of the contents of the policy.

As for the contents of the policy itself, it should always be noted that the policy should not contain words or sentences that may have different interpretations. Because, if the policy contains words or sentences that have the possibility of different interpretations, this will trigger a dispute.[14]

[13]Salim HS2014. Op. Cit., page: 43
[14]Zian Farodis, Op. Cit., page 16

The following case examples can prove that the form of the insurance policy is in written form:[15]

If you are a vehicle insurance policy holder. Pay attention to the type of coverage provided by the company you choose. If the coverage is for personal interests, you should not use it for commercial purposes. If not, it is not impossible that your insurance claim will be rejected. This happened to the owner of a rice stall in the Rawamangun area, Nurdin Tanjung. Nurdin was forced to give up his 2001 Toyota Kijang because it was stolen by a thief. The theft of the car with license plate number B 8816 took place when Nurdin rented his car to a shop customer. The plan is to rent the car for a trip to Subang with a transaction value of IDR 350 thousand.

According to the agreement, the two tenants and Nurdin left for Subang on 27 June 2009. On the way, the group ate and drank at a stall in West Kerawang. After that, Nurdin was unconscious or fainted.

The next day, Nurdin woke up. At that time, he was lying on a boardwalk on the side of the Pantura road. Meanwhile, the car, disappeared, was taken by the two people who pretended to rent it. Nurdin's car registration and wallet also disappeared with the Kijang car. In fact, the passenger rental fee has not been obtained. After returning to Jakarta, Nurdin submitted an insurance claim to PT Asuransi Sinarmas for the loss of the car. Nurdin's wife, Nurhayati, is indeed a policyholder who lost with No. 02.232.2009.00347. The insurance policy is in the name of PT Otto Multiartha, Nurhayati, Bambang Widodo Tanoyo N.

The Kijang car was indeed purchased with financing from PT Otto Multiartha. The car was purchased for Rp. 76 million with a down payment of Rp. 19 million. Every month, Nurdin and his wife have to pay in installments of IDR 2,923 million. While the insurance premium per month is Rp. 25,000.

However, the Sinarmas Insurance company rejected Nurhayati's insurance claim. Sinarmas Insurance refuses to pay because the use of the car deviates from the coverage stated in the policy. Sinarmas' attorney, Parulian Simamora, explained that Nurhayati's insurance policy was only for personal, not commercial purposes. Meanwhile, when the car is lost, the car is being rented out.

This is also emphasized in the clause of the policy which reads, "This insurance does not cover loss, damage to costs caused by the vehicle being used for uses other than those stated in the policy".

Based on the example above, the insurer refuses to pay the insurance claim submitted by the insured because the insured has violated the regulations contained in the policy which do not allow the object of the insurance to be used other than what is stated in the policy. It states that the insurance policy is made in writing and becomes written evidence that can be a proof of rejection of insurance claims made by the insured.

D. Conclusion

Based on the results of this study, it can be concluded several things regarding the legal analysis of unpaid loss insurance claims against rental cars as follows:

[15]*Online Law, "Lost Car, Insurance Denied", via*www. Hukumonline.com/berita/baca/.../car-lost-insurance-denied-, *accessed Tuesday*, *February 24 2015*, *at 21:40 WIB*

1. The form of this loss insurance agreement is a written agreement. The agreement is written into a policy. An insurance policy is a written evidence that there has been an agreement between the insured and the insurer in which in the policy there are regulations that must be obeyed by the insured in carrying out the insurance and in it there are also rights and obligations of the insured and the insurer including, namely, the insured is obliged to give or pay premium to the insured as a means of transferring risk and the insurer has the right to receive the premium, which is the use of the premium to compensate for losses that occur to the insured through the object of the insurance at a later date.
2. The loss insurance claim process begins with claim reporting, document validity, claim processing and claim settlement and this can be seen in the policy which in the event of an event the insured can immediately submit a claim to the insurance company that bears the risk of the insurance object through this procedure. The insured must complete several supporting files or documents so that the claim submitted can be accepted by the insurer which will later receive compensation from an event that occurs against the insurance object. Initial supporting documents, namely, a completed and signed loss report form, a photocopy of the policy and proof of premium payment, a certificate from the local police/lurah/sub-district head, and other required documents.

The claim for loss insurance that is not paid for the rental car is because the private car that is insured in the policy is not a transportation car or a car that can be rented, but a private car that has a less likely event of an accident or fatal loss. From this fraud, the insured party will not pay the claim submitted by the insured against the insurer, because the insured party has taken an action that is not justified in the loss insurance policy.

Reference

A. Abbas Salim. 2012. Asuransi dan Manajemen Risiko. Jakarta: Rajawali Pers.

Abdulkadir Muhammad. 2006. Hukum Asuransi Indonesia. Bandung: PT Citra Aditya Bakti.

A. Hasyim Ali. 2002. Pengantar AsuransiI. Jakarta: PT Bumi Aksara.

A. Junaidi Ganie. 2013. Hukum Asuransi Indonesia. Jakarta: Sinar Grafika

Ahmadi Miru. 2013. Hukum Perikatan: Penjelasan Makna Pasal 1233 Sampai 1456 BW. Jakarta: Rajawali Pers.

Akademisi Asuransi, "Pengertian dan Tahapan Klaim", http:// www.akademiasuransi.org/2012/11 /pengertian-dan-tahapan-klaim.html, di akses kamis, 22 Januari 2015, Pukul 11.50 wib

Ardiyansarutobi,"Data Primer dan Data Sekunder Dalam Skripsi",http://ardiyansarutobi. blogspot.com/2010/10/ data-primer-data-sekunder skripsi.html, diakses Rabu, 11 Februari 2015, Pukul 02.44 wib

Duit Pintar,"Rentetan Cara Mengurus Dokumen Klaim Asuransi Kehilangan Kenderaan",https://blog.duitpintar.com/rentetan-cara-mengurus-dokumen-klaim-asuransi-kehilangan kendaraan,diakses Kamis 26 Februari 2015, Pukul 10.30 wib

Fakultas Hukum Universitas Muhammadiyah Sumatera Utara. 2014. Pedoman Penulisan Skripsi. Medan.

Hukum Online,"Mobil Hilang, Asuransi Ditolak", melalui www.hukumonline.com/berita/baca/.../mobil-hilang-asuransi-ditolak-, diakses Selasa, 24 Feb 2015, Pukul 21.40 wib

Kartini Muljadi. 2008. Perikatan yang Lahir dari Perjanjian. Jakarta: PT Raja Grafindo.

Kitab Undang-Undang Hukum Perdata (KUHPerdata).

Kitab Undang-Undang Hukum Dagang.

Kompas.com,"forum",melaluihttp://forum.kompas.com/lapak-campur-sari/275341-kerjasama-rental-mobil-surabaya.html, diakses Senin, 02 Maret 2015, Pukul 08.53 wib

Muhammad Syaifuddin. 2012. Hukum Kontrak memahami kontrak dalam prespektif filsafat,teori,dogmatik, dan praktik hukum (seri pengayaan hukum perdata). Bandung: Mandar Maju.

Pengadilan Negeri KotaBumi, "Kajian Teori Hukum Murni Terhadap Keberlakuan Hukum Di Indonesia", melalui http://www.pn-kotabumi.go.id/index.php?option=com_content&view=article&id=1142:kajian-teori-hukum-murni-terhadap-keberlakuan-hukum-di-indonesia&catid=1:latest-news, diakses Rabu, 11 Februari 2015, Pukul 02.56 wib

SiGma. 2011. Jurus Pintar Asuransi- Agar Anda Tenang,Aman, dan nyaman. Yogyakarta: Gmedia.

Salim, H.S. 2014. Hukum Kontrak Teori dan Teknik Penyusunan Kontrak. Jakarta: Sinar Grafika.

Salim,H.S. 2010. Perkembangan Hukum Kontrak Innominat Di Indonesia. Jakarta: Sinar Grafika.

Undang-Undang No. 40 Tahun 2014 Tentang Perasuransian.

Zian Farodis. 2014. Buku Pintar Asuransi. Banguntapan Jogjakarta: Laksana.