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Legal Protection for Insurance Consumers in Cases of Default by Insurance Companies Based on the Consumer Protection Act

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Abstract: This study aims to analyze the form of legal protection provided to insurance consumers in cases of default by insurance companies, by referring to the provisions of Law Number 8 of 1999 concerning Consumer Protection. In practice, default cases often result in material and immaterial losses for policyholders, as well as legal uncertainty. Through a normative legal approach, this study examines the rights and obligations of the parties in the insurance agreement and the role of the supervisory institution in ensuring the fulfillment of consumer rights. The results of the study indicate that although there are regulations governing consumer protection, their implementation still faces various obstacles, especially in terms of law enforcement and dispute-resolution mechanisms. Therefore, it is necessary to strengthen regulations and optimize the role of the Financial Services Authority and the National Consumer Protection Agency in providing effective and fair legal protection for insurance consumers.

Keyword: Legal Protection, Insurance Consumers, Default, Insurance Companies

Abstrak: Penelitian ini bertujuan untuk menganalisis bentuk perlindungan hukum yang diberikan kepada konsumen asuransi dalam kasus wanprestasi yang dilakukan oleh perusahaan asuransi, dengan mengacu pada ketentuan Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen. Dalam praktiknya, kasus wanprestasi sering kali menimbulkan kerugian materiil dan immateriil bagi pemegang polis, serta ketidakpastian hukum. Melalui pendekatan hukum normatif, penelitian ini mengkaji hak dan kewajiban para pihak dalam perjanjian asuransi serta peran lembaga pengawas dalam menjamin terpenuhinya hak-hak konsumen. Hasil penelitian menunjukkan bahwa meskipun telah ada regulasi yang mengatur tentang perlindungan konsumen, namun dalam implementasinya masih menghadapi berbagai kendala, terutama dalam hal penegakan hukum dan mekanisme penyelesaian sengketa. Oleh karena itu, diperlukan penguatan regulasi dan optimalisasi peran Otoritas Jasa Keuangan dan Badan Perlindungan Konsumen Nasional dalam memberikan perlindungan hukum yang efektif dan adil bagi konsumen asuransi.

Kata Kunci: Perlindungan Hukum, Konsumen Asuransi, Wanprestasi, Perusahaan Asuransi

INTRODUCTION

The phenomenon of default in the insurance industry has become a serious concern in recent years (Njatrijani, 2024). Insurance companies that should provide financial protection to customers have become a source of uncertainty and loss, especially when they cannot fulfill their claim payment obligations (Adelia, 2024). Cases like this not only cause material losses for policyholders but also psychological burdens and distrust of the financial system, especially in the risk-based financial services sector such as insurance. When consumers feel they do not have a strong legal basis in dealing with these problems, concerns arise regarding the legal bias towards the injured party (Nurainiyah, 2024).

In this context, Law Number 8 of 1999 concerning Consumer Protection is the main normative basis that regulates the relationship between business actors and consumers, including in terms of insurance services. This law expressly recognizes consumer rights such as the right to comfort, security, and safety in consuming goods and/or services (Inayah, 2021). However, when a default case occurs, consumers are often trapped in a long, unbalanced procedure, facing companies with greater legal and financial resources (Afifah, 2022). It shows a real challenge in implementing legal protection that should be fair and equitable.

Consumer protection is based on efforts to balance the positions between consumers and business actors (Kristiyanti, 2022). Consumers are often in a weak position, both in terms of information and bargaining power, so legal protection is there to bridge this gap (Norma Sari, 2021). In law, protection does not only mean sanctioning business actors who violate, but also creating a preventive system so that violations do not occur (Fithri, 2021). In the world of insurance, where contracts are very complex and technical, consumers often do not fully understand the contents and implications of the policies they sign (Wisnu, 2024).

Basic principles in consumer protection such as justice, legal certainty, and benefit must be the basis for designing and implementing regulations. The principle of justice requires that all parties receive equal treatment in the legal process and agreements (Ganie, 2023). Meanwhile, legal certainty ensures that consumers understand their rights and obligations clearly, without getting caught in confusing legal loopholes (Panjaitan, 2023). Benefit brings a pragmatic dimension that the law must provide real solutions to community problems, not just stop at normative texts (Sari, 2019).

In insurance law, the principle of good faith or utmost good faith is the main pillar in every agreement. Insurance is not only a matter of economic transactions, but also an agreement based on high trust between two parties (Hifni, 2024). Consumers are required to provide honest information regarding the insured risks, while insurance companies are required to explain and claim payments with full responsibility (Hidayah, 2024). When companies ignore this principle, for example, delaying or denying affirmations with inadequate reasons can threaten to collapse public trust.

The principle of indemnity is also important to understand. Insurance aims to restore the economic condition of the policyholder to the position before the risk occurred, not to provide profit (Purnomo, 2024). Thus, when a default occurs, not only the legal principle is violated, but also the essence of the insurance agreement itself. The principle of insurable interest is also violated because consumers have a legitimate interest in the insured object and have the right to receive protection from the risk (Navisa, 2022).

The provisions in the Consumer Protection Law not only recognize the rights and obligations of consumers but also provide a basis for imposing sanctions on negligent or fraudulent business actors (Maharani A. &., 2021). These sanctions can be administrative, criminal, or civil depending on the error level and the consequences caused (Quintarti, 2024). However, the enforcement of these sanctions is often hampered by a slow legal bureaucracy

that is not in favor of victims. This shows that the existence of regulations alone is not enough, there needs to be a consistent and firm implementation system.

In line with that, Law Number 40 of 2014 concerning Insurance is present as a legal umbrella that more specifically regulates the governance of insurance companies. This law sets minimum standards for companies regarding capital, risk management, and protection of policyholders (Puteri, 2024). In other words, this law complements the Consumer Protection Law, because it regulates from the side service providers. Unfortunately, in many cases, companies that experience default are not optimally monitored, which indicates weaknesses in supervision and control.

The Financial Services Authority (OJK) regulations also strengthen the consumer protection system, especially through non-litigation dispute resolution mechanisms. OJK provides space for consumers to file complaints and request resolution through mediation or adjudication. It is a step forward, but it still requires wider socialization so that consumers feel confident enough to use this route (Maharani C. H., 2021). When regulations are available but access to them is limited, legal protection loses its practical meaning.

Amid this complexity, synergy between various regulations is key. Legal protection for insurance consumers will not be effective if each legal instrument stands alone without coordination. The Consumer Protection Law provides a broad framework, the Insurance Law regulates sectoral technicalities, and OJK regulations regulate the implementation and supervision mechanisms. All three need to run simultaneously so that consumers truly get protection that is not only legal but also real in their experience as service users.

METHOD

The research uses a normative legal method, namely an approach that relies on a study of applicable positive legal norms. This method was chosen because the primary focus of the study is to analyze the provisions of laws and regulations governing legal protection for insurance consumers in cases of default, especially as stated in Law Number 8 of 1999 concerning Consumer Protection, as well as other related regulations such as Law Number 40 of 2014 concerning Insurance and the Financial Services Authority Regulation (POJK). This approach does not involve collecting empirical data through interviews or field observations but rather relies on literature studies as the main source. The primary legal materials studied include laws and regulations, while secondary legal materials include legal literature, academic journals, and official documents from related institutions such as the OJK and BPKN. In its analysis, this study focuses on legal interpretation to explain how consumer protection should be applied in practice, as well as identifying gaps or weaknesses in the implementation of applicable laws. In addition, this method also allows the author to assess the consistency between regulations, as well as examine the potential for legal harmonization to ensure certainty and justice for consumers. By using a normative legal approach, this study seeks to provide theoretical and practical contributions to strengthening the legal protection system in the Indonesian insurance sector.

RESULT AND DISCUSSION

Legal Protection of Insurance Consumers in Cases of Default

Default in the context of insurance is a condition when an insurance company cannot fulfill its obligations in paying claims to policyholders, either in whole (total default) or in part (partial default). In practice, total default means that the company is completely unable to pay claim obligations due to serious financial inability, while partial default refers to a condition where the company is only able to pay part of the claims that should be paid. This situation can be rooted in various fundamental problems, ranging from mismanagement of funds by company management, and systematic fraud, to inconsistencies in the provision of

technical reserves required by regulations to ensure the financial stability of insurance companies.

The factors causing default are generally closely related to poor corporate governance. Carelessness in managing premium investments, weak risk management systems, and low financial transparency are some examples of causes that are often found in investigations of default cases. In addition, fraud practices or internal cheating also worsen the company's financial condition. It is contrary to the prudential principles as stipulated in Law Number 40 of 2014 concerning Insurance, specifically, Article 5 paragraph (1), which requires insurance companies to conduct business based on the principles of prudence and good risk management. The failure of companies to implement these principles directly impacts the fate of consumers who have entrusted their financial protection.

In facing cases of default, consumers have several rights guaranteed by law. The right to obtain clear, correct, and honest information about insurance products is one of the fundamental rights stated in Article 4 letter c of Law Number 8 of 1999 concerning Consumer Protection. This information includes policy provisions, risks covered, and claims procedures. When a default occurs, consumers also have the right to obtain compensation or damages, as stipulated in Article 19 paragraph (1) of the same law. The provision emphasizes that business actors who do not fulfill their obligations or cause consumer losses are required to provide compensation, either in the form of a refund, product replacement, or other approved form.

In addition, the right to resolve disputes fairly is also part of the protection inherent in consumers. In this case, Article 45 of the Consumer Protection Law provides space for consumers to resolve disputes through dispute resolution institutions outside the courts or through the courts. The Financial Services Authority (OJK) also strengthens this through POJK Number 18/POJK.07/2018 concerning Consumer Complaints Services in the Financial Services Sector. The regulation requires financial service business actors to provide effective and responsible complaint services and provide consumers with the opportunity to take objective dispute resolution mechanisms.

The form of legal protection for consumers in cases of default is divided into two, preventive and repressive protection. Preventive protection functions to prevent losses through regulation, supervision, and guidance of business actors. In this case, OJK has an important role as a regulator and supervisor of the financial services sector, including insurance companies, based on the mandate of Article 6 letter a of Law Number 21 of 2011 concerning the Financial Services Authority. OJK assesses the financial health of the company, determines the minimum technical and capital reserve policies, and imposes administrative sanctions for violations committed.

Meanwhile, repressive protection is provided when losses have occurred, and consumers have the right to recover their violated rights. One form of repressive protection is through dispute resolution, either through the Consumer Dispute Resolution Agency (BPSK) or mediation facilitated by OJK. In addition, consumers can also file civil lawsuits against insurance companies that default on their obligations to pay claims. Article 19 paragraph (2) of the Consumer Protection Law clarifies that the form and amount of compensation can be determined based on an agreement or decision of the dispute resolution institution.

In insurance, legal protection involves the company's obligation to comply with the capital adequacy ratio (risk-based capital) regulated in POJK Number 71/POJK.05/2016 concerning the Financial Health of Insurance and Reinsurance Companies. This ratio measures the company's ability to bear the risk of claims and is a key indicator in preventing default. When the company does not meet the minimum ratio, OJK is authorized to take intensive supervision steps up to company restructuring. Unfortunately, these steps have not always been effective due to delays in risk detection or weak internal supervision.

Ultimately, legal protection for insurance consumers must be seen as a system that works in two directions: preventing losses from the start, and providing justice when losses occur. Every existing legal instrument—both general in nature such as the Consumer Protection Law, and sectoral in nature such as the Insurance Law and POJK—must be implemented consistently to create public trust in the insurance industry. Consumers should no longer be left to struggle alone in the face of the impact of corporate failures that should be subject to clear principles of justice and legal responsibility.

The Role of Supervisory Institutions and Law Enforcement Issues

The Financial Services Authority (OJK) plays a central role in ensuring the stability and integrity of the financial services sector, including insurance. The supervisory and regulatory functions carried out by OJK are based on the principle that every financial services business actor acts by legal provisions and the principle of prudence. OJK has the authority to grant business licenses, supervise the financial condition of insurance companies, and determine technical policies that must be adhered to. In the context of consumer protection, OJK not only acts as a supervisor but also as a regulator of transparency standards and good governance. This effort is important so that consumers have the assurance that insurance service providers are under the supervision of an independent and professional state institution.

In its supervisory function, OJK is not limited to administrative actions alone but also develops a risk-based supervision mechanism. Through this system, OJK can identify potential problems that may arise from time to time in the operations of insurance companies. Preventive actions taken include the imposition of light administrative sanctions to the termination of business activities. However, when a default situation cannot be avoided, OJK has a mandate to take curative steps such as restructuring or even revoking the operational licenses of insurance companies that are no longer eligible to operate. In its implementation, this step must be carried out carefully so as not to cause unrest among affected policyholders.

In addition to the OJK, the National Consumer Protection Agency (BPKN) also plays an important role in efforts to ensure consumer protection. BPKN is not a supervisory institution like the OJK but plays a greater role in advocacy, education, and delivery of policy recommendations. This institution is present to ensure that consumer voices have a place in the formulation and implementation of public policies, including in the insurance sector. One form of BPKN's real work is to provide legal education to the public regarding their rights as consumers, especially concerning contract transparency, the claims process, and how to resolve disputes.

The mediation function carried out by BPKN is also an important bridge between consumers and business actors. Although BPKN does not have the authority to decide cases like a court, this institution can provide recommendations for resolving conflicts that arise between consumers and insurance companies. In practice, many consumers feel more comfortable using this route because the procedure is simpler and does not incur high costs. In addition, the results of BPKN mediation can be a strong moral and administrative basis to encourage business actors to be responsible for errors that occur.

However, law enforcement against insurance companies that fail to pay still faces various structural and cultural obstacles. One of the biggest obstacles is the weak enforcement of laws against companies that are proven to have violated. Although there are binding legal regulations, implementation in the field is often not optimal. It can be caused by limited law enforcement resources, minimal coordination between institutions, or even political intervention and economic interests that accompany major cases.

In addition to weak enforcement, the proofing process for insurance failure cases is often complicated. Disputes between consumers and insurance companies often involve

interpretations of complex policy contents that are not always easy to understand, even for legal practitioners. The slow and bureaucratic judicial process also makes it difficult for consumers who hope to get a quick resolution for the losses they experience. It creates a gap between the desire of the law to provide protection and the reality on the ground which is often disappointing.

Another problem that is no less important is the low level of public legal awareness of consumer rights. Many policyholders do not fully understand their rights when purchasing insurance products. They often consider insurance companies as the absolute party that determines all decisions, including in terms of claim disbursement. The ignorance causes many consumers not to take legal action even though they have experienced real losses. It shows how significant consumer legal education is from the start so that every individual can become a critical and empowered consumer.

The situation illustrates that legal protection is not enough just on paper. A more proactive system is needed that directly touches the community's interest. Law enforcement is not only about imposing sanctions, but also ensuring that the community feels protected in their interactions with the business world. When supervisory and advocacy institutions can work in harmony, and are accompanied by an increase in public legal literacy, legal protection for consumers is no longer an abstract concept, but rather a reality that can be felt in everyday life.

CONCLUSION

Based on the analysis results of legal provisions and consumer protection practices in insurance in default cases, it can be concluded that normatively, the legal framework for consumer protection in Indonesia is quite adequate. Law Number 8 of 1999 concerning Consumer Protection and Law Number 40 of 2014 concerning Insurance, along with derivative regulations such as POJK, have provided a clear legal basis regarding the rights and obligations of the parties. However, at the implementation level, this legal protection has not been running optimally. Many cases of default do not immediately receive a fair resolution for consumers, due to various obstacles such as weak law enforcement, imbalance of information between consumers and companies, and the lack of effectiveness of the role of supervisory institutions such as OJK and consumer advocacy institutions such as BPKN. This uncertainty and inequality indicate that protection efforts still require improvements in institutional and technical operational aspects.

To overcome these various problems, the recommendation that can be submitted is the importance of strengthening technical regulations, especially those governing insurance company reserve fund obligations, and a tighter integrated supervision mechanism. OJK must be given more space and flexibility in intervening in insurance companies that have the potential to default. On the other hand, it is necessary to optimize the function of legal education for the community, so that consumers understand their rights and do not hesitate to seek justice when they are harmed. BPKN can be further empowered in the aspects of mediation and legal socialization. In addition, the dispute resolution process needs to be redesigned to be faster, cheaper, and oriented towards recovering consumer losses, not just enforcing legal formalities. Simplifying these procedures will greatly assist consumers from all walks of life to access justice more inclusively and humanely.

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