



Insurance Products as Protection for Debtors Due to Failure to Implement Performance in Business Agreements

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Abstract

In business protection, there are instruments that are able to anticipate business losses if one party does not carry out what has been agreed. An instrument called insurance. Insurance products according to Article 246 of the Commercial Code (KUHD) are "an agreement whereby an insurer binds himself to an insured, by receiving a premium, to provide compensation to him for any loss, damage or loss of expected profits, which he may suffer due to an unspecified event". Insurance itself is useful as protection for the insured in the event of expected losses or profits in the future. As is the case in carrying out a contractual relationship, it cannot be guaranteed that it will run smoothly and according to what has been stated in the agreement. At any time, there is the potential that one of the parties to the agreement will not be able to carry out its obligations and this will result in the creditor not fulfilling their performance. This research is legal research (doctrinal research) with a statutory approach, a conceptual approach and an analytical approach. The results of this research explain that First, In a business agreement, the most important thing is that the parties must carry out the provisions to give something, do something or not do something. Second, Insurance itself is financial security for parties interested in running a business so that the business goal of making a profit can be achieved. Third, In cases where debtors fail to carry out their obligations resulting in defaults covered by insurance, it is an ecosystem of mutually beneficial economic circulation with other economic actors.

INTRODUCTION

The development of business needs has become increasingly rapid, especially the contractual relationships entered into by the parties. The parties as legal subjects want legal protection for the implementation of the agreement as long as it lasts. In Article 1320 of the Civil Code or abbreviated (Perdata Code), the subjective terms in an agreement are agreement and competence. When an agreement has been expressed and the parties are legally competent, the contractual relationship can continue. In business protection, there are instruments that are able to anticipate business losses if one party does not carry out what has been agreed. An instrument called insurance. Insurance products according to Article 246 of the Commercial Code (KUHD) are "an agreement whereby an insurer binds himself to an insured, by receiving a premium, to provide compensation to him for any loss, damage or loss of expected profits, which he may suffer due to an unspecified event". Insurance itself is useful as protection for the insured in the event of expected losses or profits in the future.

Insurance itself, there are types of insurance that have been offered by insurers to the insured, namely Property Insurance, Health Insurance, Credit Insurance, Money and Property Insurance and so on. In principle, there are principles that exist in insurance, namely the principle of insurable interest, the principle of indemnity, the principle of perfect honesty (utmost good faith), the principle of transferring the right to claim responsibility to third parties (subrogation), and contribution principle. In principle, insurance products play a full role in

meeting the life needs of the insured, especially business needs. Business activities have a high level of risk if at any time there is financial instability, there is the potential for failure in running the business. Referring to the characteristics of insurance, it is more about anticipating uncertainty¹. As is the case in carrying out a contractual relationship, it cannot be guaranteed that it will run smoothly and according to what has been stated in the agreement. At any time, there is the potential that one of the parties to the agreement will not be able to carry out its obligations and this will result in the creditor not fulfilling their performance.

Many contract disputes result in default, which means the parties are obliged to insure to minimize these losses. If we refer to the insurance principle, namely interests that can be insured, then a business agreement can be an object that can be insured as long as the parties have mutual interests. The implementation of this agreement is based on the principle of balancing the total burden of obligations on each party involved in the agreement². In contract law, failure to fulfill the terms of a decision that has been reached by what has been agreed is called a default. The principle of balance in contractual law aims to ensure that the parties can carry out their proportions in the agreement well. However, failure to carry out the proportions in the agreement can be anticipated with insurance instruments from before the agreement is implemented. Insurance has many broad and complex benefits (both micro and macro)³. Insurance is a symbiotic economic cycle ecosystem between economic actors (*mutualistic symbiosis*)⁴. Called *symbiosis* because apart from being able to provide protection and guarantees to customers, insurance also offers various benefits, for example minimizing risks⁵. Therefore, the author will analyze about "*Insurance Products as Protection for Debtors Due to Failure to Implement Performance in Business Agreements*".

RESEARCH METHODS

This research is normative legal research. Normative legal research is intended as research carried out by document study. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.⁶ The approach used in this research uses a statutory approach (*statute approach*), analytical approach (*analytical approach*) and conceptual approaches (*conceptual approach*).

DISCUSSION

Business Agreements According to Law

Article 1313 of the Civil Code states that an agreement is an act by which one or more people bind themselves to one or more people.⁷ An agreement is a source of binding for the parties to be able to carry out their rights and obligations as stated in the agreed agreement. In the business world, an agreement becomes an instrument to expedite all efforts made by the parties who bind each other in the business. The principle of consensualism contained in Article 1320 of the Civil Code implies the willingness of the parties to bind themselves to each other

¹ Kikie Mogie, "Insurance in the Property Business Sector According to Legislation". *Lex Et Societatis*. Vol. V. No.10.2017.p. 108-114

² Nur Azza Morlin Iwanti and Taun, "Consequences of Default Law and Legal Remedies for Default Based on Applicable Laws". *Journal of Legal Studies*. Vol.VI. No.2.2022.pp.346-351

³ Abbas Arfan, "Prospects and Obstacles to the General Insurance Business from an Islamic Law Perspective". *De jure*. *Journal of Sharia and Law*. Vol.1. No.1.2009.pp.63-70

⁴ *Ibid.* Abbas Arfan, "Prospects and Obstacles.....pp.63-70

⁵ *Ibid.* Abbas Arfan, "Prospects and Obstacles.....pp.63-70

⁶ Mahmud Marzuki, *Legal Research* (Prenada Media 2005).

⁷ Zulhamdi and Husnaini, "Legal Aspects of Agreements in Business Activities", *Al-Hiwalah*. *Sharia Economic Law*. Vol.1. No.1.2022.pp.75-84

and this willingness generates confidence that the agreement will be fulfilled.⁸ The principle of consensualism not only generates trust between parties but also plays a role in facilitating and developing business between parties. In the context of free trade, contract law has an important role in facilitating and developing business, as well as regulating transactions between entrepreneurs⁹. As transactions between entrepreneurs progress, there is a need for agreement instruments as an action that is beneficial both legally and business-wise. Implementation of business agreements in practice in the field often excludes legal regulations in the formulation of agreements in agreements, even though every legal rule should be obeyed.¹⁰ As a result of ignoring applicable legal rules, it can cause parties, especially debtors, to be reluctant to carry out their obligations, making it appear as if the creditor is in default.

Basically, an agreement begins with differences or inequalities between the parties, so it is necessary to formulate a contractual relationship that is based on the negotiation process between the parties.¹¹ However, even though an agreed contract has been formed, there are sometimes imbalances that lead to disputes. Considering the important role in making an implementation of an important contract, it cannot be ruled out that agreements made on a contract must be based on good faith in accordance with Article 1338 paragraph (3) of the Civil Code.¹² Good faith is a filter that contains moral values and compliance for the existence of a contract that has been legally recognized by its maker.¹³ The basis of good faith as a legal measure to protect the parties in a contractual relationship in the form of appropriate and inappropriate actions in carrying out the agreement.

Like the trend of franchise business activities which require the use of franchise agreements as a form of legal innovation to protect franchisors (*franchisor*) with the franchisee (*franchisee*). The form of agreement between the parties in a franchise is generally outlined in a franchise agreement which contains the rights and obligations of the parties¹⁴. The franchise agreement contains the following matters¹⁵:

- a. Rights which include the use of special methods or recipes, use of brands, trade names, time periods, extensions and areas of activity and other rights granted by the franchisor to the franchisee;
- b. The compensation given by the franchisee for the rights received from the franchisor when the business starts running;
- c. Arrangements that must be agreed upon in advance relate to the sale of the franchisee's rights to another party. In the event that the franchisee does not want to continue the franchise business and plans to sell it to another party;
- d. Provisions regarding termination of franchise cooperation

Examining business agreements within the scope of franchises, legal protection is regulated both preventively and repressively. The author believes that there is still a gap towards disputes if one of the parties is careless or not careful in taking legal action so that the party has neglected to carry out its obligations, for example, the franchise agreement has ended

⁸ Wahyuni Safitri, "Legal Protection of Business Contracts in Indonesia from a Justice Perspective". Legal Standing. Vol.4. No.2.2020.pp.78-85

⁹ Roy Fachraby Ginting, et al "The Relationship and Role of Legal Agreements in Business in Indonesia". Juristic Journal. Vol. 3, no. 2.2023.pp.1-5

¹⁰ Abdul Fatah, "Legal Deviations in Business Agreements". Legal rule. Journal of Legal Studies. Vol 6, No. August 1| 2023.pp.97-108

¹¹ I Gst. Agung Rio Diputra, "Implementation of Contract Design in Making Business Contract Structures". Acta Comitas. Vol. 3 No. 3 Desember 2018.hlm.549-560

¹² *Ibid.* I Gst. Agung Rio Diputra, "Implementation of Contract Design.....pp.549-560

¹³ *Ibid.* I Gst. Agung Rio Diputra, "Implementation of Contract Design.....pp.549-560

¹⁴ Zil Aidi and Hasna Farida, "Legal Protection of the Parties in Food Franchise Agreements". Journal of Legal Scholars. Vol. 4, No 2, March 2019.pp.207-230

¹⁵ Adrian Sutedi, 2008, *Franchise Law*, Ghalia Indonesia Publisher, Bogor.p.82

but the franchisee accidentally still uses the franchisor's brand which was previously agreed upon.

Business transactions are usually preceded by correspondence activities between buyers and sellers, which are then followed up with face-to-face negotiations or through media, verbally via telephone, Skype, Zoom, or others.¹⁶ The points of agreement that have been reached by both parties are then concluded in a written document called a trade contract. The conclusion of this collective agreement is usually referred to as "*Approval in Principle*" between the two parties, which will be the basis for them to realize the points of the agreement as well as the basis for fulfilling their rights and obligations. If we refer to Article 1234 of the Civil Code that "*Covenants are intended to give something, to do something, or not to do something*". In a business agreement, the most important thing is that the parties must carry out the provisions to give something, do something or not do something. These three elements are a legal way to protect the parties and detect whether this agreement will result in default or not.

Implementation of an agreement is the act of realizing or fulfilling the rights and obligations that have been agreed upon by the parties, so that the goals that have been made are achieved. Implementation of the agreement in the form of¹⁷:

1. Giving Amount of Money

The party making the gift is the investor or recipient of the partnership, or another person who is represented as an investor based on a special power of attorney. In the modern business world, payment by proxy is commonplace and frequently encountered. The means of payment used is generally currency.

a. Delivery of Goods

In every agreement that contains the purpose of transferring control and or property rights, the object must be handed over (*lavering, transfer*). An object is something that can be owned or an object of possession. Types of objects can be classified as follows:

1) Tangible and intangible objects

The importance of this classification lies in the method of delivery if the object is transferred to another party through certain legal acts, for example buying and selling, inheritance and gift. The handing over of tangible objects is carried out actually from hand to hand. Meanwhile, the transfer of immovable objects is carried out by changing the name.

2) Moving and non-moving objects

The significance of this classification lies in control, delivery, expiration, and encumbrance. Movable objects by their nature are objects that can be moved, for example chairs, tables, books. Movable objects due to the provisions of the law are the rights attached to movable objects, for example the right to use movable objects, receivables.

Meanwhile, immovable objects by their nature are objects that cannot be moved, for example land and everything attached to it, such as buildings and trees.

2. Services

Services are providing services by carrying out certain production activities, either using mere physical labor or using certain skills or tools, either with wages or without wages. If with wages unless otherwise agreed.

¹⁶ Abdillah Sani, "Understanding and Using Trade Contracts in Small and Medium Enterprises (UKM) Business Transactions". HPE Vol. 8 No.1 JAN – JUNE 2020.p.1-10

¹⁷ Cinde Semara Dahayu and Ambar Budhisulistiyawati, "Judicial Review of the Implementation of Partnership Cooperation Agreements (Case Study of Brownies Cinta Sragen Branch)". Private Law Journal Vol. VIII No. 1 January-June 2020.pp.70-77

According to Salim, a contract is: "a legal relationship between one legal subject and another legal subject in the field of property, one legal subject has the right to performance and the other legal subject is obliged to carry out its performance in accordance with what has been agreed upon.¹⁸ Therefore, a business agreement is seen from the delivery of a sum of money, delivery of tangible or intangible goods, movable and immovable goods and services in the form of someone's expertise or energy that has been given to realize the achievements that will be received by one of the parties in the agreement.

Insurance Products According to Law

Insurance in general is an agreement where the insurer forms a bond with the insured by accepting a premium to provide compensation to the insured for a risk of loss, damage or loss that may be experienced due to an unexpected event.¹⁹ The development of insurance products has penetrated the needs of human life, especially business activities. The development of insurance products is influenced by the principles contained in the use of insurance. The following are the principles of insurance, namely:

1) Insurable Interest

In principle, it is a legal right to insure a risk related to finances, which is recognized as legally valid between the insured and the thing insured.

2) Utmost Good Faith (good faith)

In entering into an insurance contract, both parties are based on good faith. The insured and the insurer must express transparency to each other. The obligation of both parties to disclose facts is called the duty of disclosure

3) Indemnity

The concept of indemnity is the insurer's mechanism for compensating for risks that befall the insured with financial compensation. This concept cannot replace lost life or damaged or disabled body parts because indemnity is related to financial compensation.

4) Proximate Cause

It is an active, efficient cause that causes an event to occur in a chain or sequence without the intervention of another condition initiated and working actively from a new and independent source.

5) Subrogation

In principle, it is the right of the insurer who has provided compensation to the insured to sue other parties who cause their insurance interests to experience a loss.

6) Contribution

That the insurer has the right to invite other insurers who have the same interests to join together in paying compensation to an insured even though the amount of their respective dependents is not necessarily the same amount.

In the business world, insurance products have a significant role in protecting the insured's ownership and assets. Besides that, Prof. P.L. Wery in his book *Hoofzaken van Het Verzekeringsrecht* further states that from the limitations of Article 246 of the Indonesian Criminal Code, which is the same as Article 246 also from *Wetboek van Koophandel*, he concludes that this article contains three main characteristics of an insurance or coverage agreement as follows²⁰:

¹⁸ Salim HS, 2004. *Contract Law, Theory and Techniques for Drafting Contracts*, Sinar Graphics, Jakarta. Pg. 27

¹⁹ Putra Halomoan Hasibuan, "Analysis of Sharia Insurance Law with Conventional Insurance Law". *Jurisprudence* Volume 2 Number 1 June 2016. pp.65-84

²⁰ Purwanto, "Renewing the Definition of Insurance in the Legal System in Indonesia". *LAW Minutes Faculty of Law, Unmul*, December 2006, Page. 87 - 93

1. Insurance is basically a contract or indemnity agreement or identity contract, where one party (the insurer) binds himself to another party (the insurance taker or insured) to compensate for any losses he may suffer.
2. Insurance is a conditional agreement, in the sense that the insurer compensates the insured party for losses determined or dependent on events that cannot be determined in advance
3. Insurance is a reciprocal agreement. And the insurer has a conditional bond with the insured to pay compensation, but on the other hand, on the insured's side there is an unconditional bond to pay the premium.

Many trading activities currently use insurance products to protect interests from losses or risks that will occur in the future. Insurance itself is financial security for parties interested in running a business so that the business goal of making a profit can be achieved. Insurance business can be defined as a fund collection activity aimed at providing compensation to²¹ consumers who experience these events²². Insurance has several benefits, including, as a means of risk transfer, as insurance against losses faced, because of insurance, interested parties can focus themselves so as not to worry about risks resulting from adverse events.²³

In insurance there are two parties, the insurance company and the policy holder, who remind each other through an agreement. An agreement is a legal act that will give rise to legal consequences in the form of rights and obligations²⁴. An insurance agreement or contract is also called *contingent contract*, namely a contract or promise where the insurance company will do something depending on the occurrence of an event, so it can also be interpreted as the insured or policy holder still having to pay the premium regardless of whether the insurance company carries out its promise or not. The need for insurance services is also a financial means that arises as a result of the most basic risks, namely the natural risk of death and in facing various risks to the assets owned.²⁵. A debtor's negligence in carrying out his obligations can be used as an insurance object on the basis of financial risk protection.

Risk management by the insurance company is carried out through a special agreement made to overcome risks which is often called a coverage agreement²⁶ According to Satijipto Raharjo, legal protection is providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.²⁷

Insurance Products as an Effort for Negligent Debtors in Carrying Out Business Agreements

The characteristics of insurance products as protection for humanity in carrying out their lives are automatically able to minimize business disputes that occur in the future. If you refer to Article 247 of the Criminal Code, "it concerns several types of insurance, namely fire insurance, accounting, agricultural products and life insurance. According to Emmy Pangaribuan Simanjuntak, Article 247 of the Criminal Code legally does not limit or prevent the emergence of other types of coverage according to the needs of the community." The needs

²¹ Rahmi Zubaidah, et al "Legal Protection of Life Insurance Policy Holders in Indonesia (Case Study of PT. Asuransi Jiwasraya)". *Journal of Health Law and Ethics*. Volume 2 Number 1. 2022.pp.84-94

²² Wetmen Sinaga, "Judicial Review of the Rights and Interests of Insurance Policy Holders". *Tora Law Journal*. Volume 8 Issue 3, 2022.pp.341-356

²³ *Ibid.* Wetmen Sinaga, "Judicial Review of.....pp.341-356

²⁴ *Op.Cit.* Rahmi Zubaidah, et al "Legal Protection of Holders....pp.84-94

²⁵ Indra Afrita and Wilda Arifalina, "Legal Responsibility of Life Insurance Companies towards the Insured in Payment of Insurance Claims". *Lancang Kuning University Respublica Law Journal*.2021.pp.1-12

²⁶ Abdulkadir Muhammad, *Indonesian Insurance Law*, (Jakarta: Citra Aditya Bakti, 1999), p. 166

²⁷ Satijipto Raharjo, *Legal problems in Indonesia*, (Bandung: alumni, 2000). p.70

of society in the business world are increasingly complex, especially if the debtor is negligent in carrying out the agreement, this has the object of being covered by insurance.

The insurance company will accept the risks it will face provided that what is insured has value (insurable interest) accompanied by legal proof of ownership of what will be insured. Insurance is able to provide financial guarantees (*financial security*) to the insured party for losses experienced as a result of the risk so that the value of the loss can be minimized. However, insurance can cover the insured's losses as long as it is determined and agreed upon in the agreement between the insured and the insurer. According to Djojosoedarso "loss insurance is an agreement by which one insurer binds itself to another insured to compensate for losses that may be suffered by the insured, due to the occurrence of an event that has been designated and which is not necessarily coincidental, by which the insured also promises to pay the premium".

The insurer's limitations in covering the insured's losses are determined in Article 256 of the Commercial Code. Article 256 of the Criminal Code explains as follows;

All policies, except life insurance policies, must state:

1. the day the coverage is procured;
2. the name of the person holding the insurance at his own expense or at the expense of another person;
3. a fairly clear description of the goods insured;
4. the amount of money for which it is insured;
5. the danger that the insurer takes on at its expense;
6. the start and end time of the danger which may occur at the expense of the insurer;
7. Insurance premium; And
8. there are generally, all circumstances the knowledge of which may be absolutely essential to the insurer, and all terms agreed between the parties

In practice, debtors who do not carry out their obligations, causing default, can be covered based on the amount of money that can be insured. In other words, if the value of the default by the debtor is half the value of the creditor's loss, the insurer will pay based on the value agreed in the policy even though it is half the loss. This form of coverage is a proportional action accepted by the insurer as insurance to minimize losses. According to Mark R. Greene, insurance is an economic institution that reduces risk by combining under one management and group of objects in a condition so that large losses suffered by a group can be predicted in a smaller scope.²⁸

Insurance is an ecosystem of symbiotic economic circulation between economic actors (symbiotic mutualism)²⁹. It is called symbiosis because apart from being able to provide customer protection and guarantees, insurance also offers various benefits, for example minimizing risks³⁰. In the case of the debtor's failure to carry out his obligations resulting in a default covered by insurance, this creates an ecosystem of mutually beneficial economic circulation with other economic actors. In this case, it is a novelty regarding insurance protection for a debtor who is unable to carry out his obligations, causing a default. Therefore, the debtor's negligence which cannot be implemented can be covered as long as the policy is agreed between the insured and the insurer.

²⁸ M. Syakir Sula, *Sharia Insurance, Concept and Operational System*, (Jakarta: Gema Insani Press, 2004), 26

²⁹ Khusniati Rofiah, "Discussing Insurance Practices in Indonesia Studying Legal Sociology". *Justitia Islamica*, Vol. 10/No. 1/Jan.-June 2013, pp.136-158

³⁰ *Ibid.* Khusniati Rofiah, "Discussing Insurance Practices.....pp.136-158

CONCLUSION AND SUGGESTION

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Basically, an agreement begins with differences or inequalities between the parties, so it is necessary to formulate a contractual relationship that is based on the negotiation process between the parties. In a business agreement, the most important thing is that the parties must carry out the provisions to give something, do something or not do something. These three elements are a legal way to protect the parties and detect whether this agreement will result in default or not.

Many trading activities currently use insurance products to protect interests from losses or risks that will occur in the future. Insurance itself is financial security for parties interested in running a business so that the business goal of making a profit can be achieved. Risk management by the insurance company is carried out through a special agreement made to overcome risks which is often called a coverage agreement.

In the case of the debtor's failure to carry out his obligations resulting in a default covered by insurance, this creates an ecosystem of mutually beneficial economic circulation with other economic actors. In this case, it is a novelty regarding insurance protection for a debtor who is unable to carry out his obligations, causing a default. Therefore, the debtor's negligence which cannot be implemented can be covered as long as the policy is agreed between the insured and the insurer

Suggestion

There is a need for additional insurance products with a focus on protection for debtors who are negligent in carrying out their obligations in the agreement as a form of minimizing risk and showing good faith from debtors to creditors.

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