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Liability Form of The Insurance for Damages of The Fire Insurance Agreement

Luh Ketut Ayu Manik Sastrini[1]

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Abstract

Fire insurance aims to compensate for losses caused by fire. On this basis, the research is focused on the problem, namely what is the form of the insurer's responsibility for the loss of the insured in the fire insurance agreement? The purpose of this study is to determine the form of the insurer's responsibility for the loss of the insured in the fire insurance agreement. The research method used in this study is a normative research method and the problem approach used is the approach to applicable laws and regulations. The results of the study found that the insurer as an insurance provider will compensate for fire losses and the compensation funds are given to the insured as insurance participants. On the other hand, the insurer does not provide compensation for damage to property that is not guaranteed, such as an element of intent, negligence, whether the insured (or authorized to represent) as well as other parties, as well as those caused by natural factors.

1. Introduction

Ring & Van de Ven (1994) states that an agreement is a process of interaction or legal relationship between two legal actions, namely an offer by one party and acceptance by the other party so that an agreement is reached to determine the contents of the agreement that will bind both parties. In article 1313 of the Civil Code, an agreement is "an act by which one or more people bind themselves to one or more other people" (MR, 1921). According to Gundlach & Murphy (1993), an agreement is an agreement that is formulated in writing which gives birth to evidence of the existence of rights and obligations. It implies that an agreement is a legal relationship between two or more parties based on an agreement to cause a legal consequence. This agreement is based on an agreement that can lead to actions and legal consequences in carrying out rights and obligations. One party is obliged to excel

[1]*Bali Dwipa University, Denpasar, Indonesia. Email: manik_sastrini@yahoo.com*

and the other party is entitled to the achievement, there is a reciprocal relationship between the two parties. The four conditions for the validity of an agreement are regulated by Article 1320 of the Civil Code (Priyono et al., 2019), namely:

1. There is an agreement from both parties.
2. There is the ability of the parties to make an engagement.
3. There is a certain thing.
4. There is a cause that is not prohibited by law.

Afrita (2021) states that the insurance agreement is one of the special types of agreements regulated in the KUHD[2] so that the provisions of the legal terms of the agreement in the Civil Code also apply to insurance agreements (Yustisia, 2014). According to Giblin (1989), the conditions for a valid insurance agreement are: agreement, skill (authorized), certain objects, lawful causes, there are interests that can be insured and notifications.

Insurance is a system created to protect people, groups or business activities against the risk of financial loss by dividing or spreading the risk through the payment of a number of premiums (Calomiris, 1990). Insurance or coverage is a form of contract or agreement called a policy and states that one party called the insurer agrees as compensation for a compensation or known as a premium to pay an agreed amount of money to the other party or who is responsible for replacing a loss, damage or injury to something valuable in it.

Moreover, insurance is a financial product that is very important and can create a sense of security both mentally and economically. The insurance products offered, such as life, health, car insurance, and one type of insurance that is not left behind is fire insurance. Fire insurance is insurance that provides compensation if a house or building or factory and its contents are damaged due to fire, lightning strike, explosion, plane crash, and smoke. In addition to buildings, fire insurance also guarantees the risk of building contents such as household furniture, home appliances, merchandise machines, inventories, finished goods, and so on. Fire insurance can cover any damage and loss to fixed or movable property that is affected by fire, either intentionally or unintentionally. The articles governing fire insurance are Article 256, Article 287 to Article 298 of the KUHD (Yustisia, 2014). The cause of the fire is the responsibility of the insurer and the insurer accepts as his responsibility for the losses caused by the fire.

In Article 1 point 1 of the Insurance Law, fire insurance is defined as an agreement between two parties, namely the insurance company and the policy holder which is the basis for receiving premiums by the insurance company in return for providing reimbursement to the insured or policy holder due to loss, damage, costs. arising, loss of profits or legal liability to third parties that may be suffered by the Insured or the policy holder due to a fire event that befell the object or property belonging to the Insured.

In the insurance agreement, the party who transfers the risk is referred to as the Insured and the Insurer is the party who accepts the transfer of risk where by obtaining a premium, promises to compensate or pay an agreed amount of money, if an unexpected event occurs which results in loss to the insured. An insurance policy is an insurance agreement between the insurer (insurance company) and the insured (insurance participant) (Skipper et al., 2001). The insurance policy contains a risk transfer agreement, terms and commitments of both parties. It is important for insurance participants or insurance premium payers to know the contents contained in the insurance policy. This written evidence will be used as a guide when we want to get rights as insurance customers. On the other hand, the policy also provides protection to the insurance company if the insurance participant demands rights outside the agreed contract.

[2] *The term of Indonesian Law for Commercial Code Book.*

Based on the background that has been described, the formulation of the problem in this study is what the form of the insurer's responsibility for the loss of the insured in the fire insurance agreement is. The purpose of this study is to determine the form of the insurer's responsibility for the loss of the insured in the fire insurance agreement.

2. Material and Method

The research method used in this study is a normative research method (Babüroglu & Ravn, 1992). The problem approach used is the approach to applicable laws and regulations and a conceptual approach by analyzing the problems that will be discussed through legal concepts taken from other books.

Sources of legal research used in this study include:

1. Primary legal sources such as: Civil Code, Indonesian Commercial Law, Law Number 40 of 2014 concerning Insurance, Government Regulation Number 73 of 1992 concerning the Implementation of Insurance Business, Decree of the Minister of Finance of the Republic of Indonesia Number 422/KMK.06/2003 concerning Business Conduct of Insurance Companies and Reinsurance Companies
2. Secondary legal sources that provide explanations for primary laws such as laws or legal expert opinions.

3. Findings and Discussion

Insurance from a legal and economic point of view is the main form of risk management used to avoid the possibility of an uncertain loss. The articles that regulate fire insurance are Article 256, Article 287 to Article 298 of the KUHD (Yustisia, 2014). Fire insurance, according to Schneiberg & Bartley (2001), aims to compensate for losses caused by fire. Objects that are the object of fire insurance can be in the form of fixed objects, such as buildings, houses, factories, and movable objects such as motorized vehicles, ships, and movable objects contained within or as part of the relevant fixed objects, such as office buildings, office equipment, motorized vehicles and cargo movable objects. the vehicle, the house and the movable objects in the house. Details of the object of fire insurance are included in the policy, what is insured and how much is the insurance. Fires, whether caused by short circuit or electrical short circuit, spread of fire or self-generated heat, or due to fire spread from other object fires, neighboring houses, tree fires or fires due to negligence or carelessness, employees or other people such as fire because the stove explodes, gas leaks, or because of cigarette butts and others, damage caused by firefighting efforts is also guaranteed.

Every object of fire insurance must be clearly located where and what borders it is. If they are adjacent to buildings, what is the nature and use of these buildings, are there any and to what extent do they affect the risk of fire which is the responsibility of the insurer. If the object of fire insurance is a movable object, it is necessary to explain the location and boundaries of the building and the place where the movable object is stored or buried. Every object of fire insurance must be clearly used and what it is used for. Terms of use or this use has to do with the terms of changing the purpose of use which is a risk aggravation (Article 293 KUHD). As a result, in the event of a fire causing a loss, the insurer is not obliged to pay compensation. This risk becomes the basis for determining the amount of premium that must be paid by the insured. The heavier the risk, the greater the premium paid. If there is an aggravation of risk due to a change in the purpose of use, it is necessary to notify the insurer whether the premium amount is increased or the insurer terminates the fire insurance. This provision implies honesty and openness from the insured who has the obligation to explain all facts regarding the object of insurance. This is related to the principle of perfect good faith and has been explained in

Article 251 of the KUHD (Yustisia, 2014). Honesty of the insured remains put forward after the insurance runs. If the insured expands the risk of the insured object by changing or transferring the use of the insurance object to something different from the original use as stated in the policy, it must be notified to the insurer. So that, the insurer can make a decision whether to continue the coverage by increasing the premium amount or stopping it. If the insured does not notify the insurer of the expansion of the risk, the insurer has the right to refuse the claim submitted by the insured based on the provisions of Article 293 jo 251 KUHD (Yustisia, 2014).

The cause of the fire which is the responsibility of the insurer is regulated in Article 290 of the KUHD (Yustisia, 2014). The insurer is responsible for the dangers equated with fire, namely losses caused by gunpowder eruptions, steam boiler explosions, lightning strikes and others even though the eruption, explosion or lightning strike does not cause a fire (Article 291 of the KUHD). The definition of "burning" includes ordinary fires and even broader than that.

In the practice of fire insurance, the risk that is guaranteed is clearly specified in the policy. A fire insurance policy is an agreement in writing in a deed between the customer (the insured) and the insurance company (the insurer), which bears all damage and losses to fixed or movable property damaged by fire, either intentionally or unintentionally. in the police Indonesian fire insurance standards, the risk covered is determined by a policy that covers loss or damage to the property and or interests insured directly caused by:

1. Fire
   Fires that occur due to carelessness or error, servants or employees of the insured, neighbors, robbers or the like, or due to other causes of fire as long as they are not excluded in the policy, including the result of:
   a. the spread of fire that arises by itself (self-combustion), short circuit (short circuit), or due to the nature of the goods themselves (inherent vice);
   b. fires that occur due to fires of other adjacent objects, namely damage or reduction of property and or interests insured due to water and or other tools used to contain or extinguish fires, as well as losses caused by the destruction of all or part of the property and or the insured interest on the order of the competent authority in an effort to prevent the spread of the fire.
2. Lightning
   Damage directly caused by lightning. Especially for machinery, electrical or electronic equipment and electrical installations covered by this policy if the lightning causes fire to the objects in question.
3. Explosion
   The definition of explosion in this policy is any sudden release of energy caused by the expansion of gas or steam. The explosion of a vessel (boiler, pipe, etc.) can be considered an explosion if the walls of the vessel are torn open in such a way that there is a sudden balance of pressure inside and outside the vessel. If the explosion occurs in the vessel as a result of a chemical reaction, any damage to the vessel can be compensated even if the walls of the vessel are not torn open. Losses caused by low pressure in the vessel are not covered by the policy. Damage to the combustion engine caused by an explosion in the combustion chamber or on the electric switch button due to the generation of gas pressure, not guaranteed. With the condition that if the risk of explosion is also covered with other types of policies specifically for that purpose, the insurance only bears losses due to explosions as long as it is not covered by the other types of policies.
4. Airplane crash,
   The fall of an airplane that is guaranteed in this policy is a physical collision between an airplane or anything that falls from an airplane with the property and or interests insured or with a building containing the property and or interests insured.
5. Smoke

Smoke refers to smoke arising from the fire of property insured under this policy.

The formulation of Article 290 of the KUHD is very broad, as a lex specialist can abolish the force of the enactment of Article 249 of the KUHD, for example, a fire itself due to a defect in an insurance item which according to Article 249 of the KUHD, the insurer is not obliged to pay compensation, but according to the provisions of Article 290 of the KUHD, the insurer is obliged to pay compensation (Yustisia, 2014). The provisions of Article 292 of the KUHD states, equated with losses due to fire are losses caused by gunpowder explosions, steam boiler explosions, lightning strikes, and so on, even though the explosion, the strike does not cause a fire. Losses due to fire Article 292 of the KUHD is often extended again in the policy in accordance with the needs and agreements. The occurrence of an event causing a fire that is borne by the insurer results in a loss for the insured. In the event of a loss, the insurer is obliged to pay the claim submitted by the insured. To fulfill its obligations, the insurer needs to prove whether the fire that occurred was the cause of the loss for which he was responsible. According to the provisions of Article 294 of the KUHD:

> *"The Insurer is freed from the obligation to pay for the loss, if he proves that the fire was caused by an error or to the Insured himself which greatly exceeds the limit"*

The insured's own fault is generally regulated in Article 276 of the KUHD, which is an element that frees the insurer from his obligations. According to the provisions of Article 276 of the KUHD:

> *"There is no loss caused by the insured's own fault to be borne by the insurer. Even the insurer still has or demands premium payment if he has started to face danger".*

However, Article 294 of the KUHD specifically determines the fault of the insured himself in fire insurance. The specificity of Article 294 of the KUHD according to Yustisia (2014) is that the insurer must be able to prove that the fire was caused by the insured's own fault or negligence which greatly exceeded the limit. it is stated that the insurer is willing to bear all risks (full risk) but does not include deliberate risks and is caused by natural factors, such as earthquakes, volcanic eruptions, tsunamis, landslides, floods, hurricanes or storms so that the insurer can be released from his obligations.

4. Conclusion

Fire insurance is insurance or coverage that provides coverage for loss and/or damage to the insured property and or interests caused or caused by a fire guaranteed in the policy. The articles that regulate fire insurance are Article 256, Article 287 to Article 298 of the KUHD. Fire insurance is insurance that provides compensation if a house or building or factory and its contents are damaged by fire, struck by lightning, explosion, falling airplane and smoke.

The object of fire insurance can be in the form of fixed objects, such as buildings, houses, factories, and movable objects such as motorized vehicles, ships, and movable objects contained in or as part of the relevant fixed objects. The object of fire insurance must be clearly located where and what borders. Honesty and openness of the insured who has the obligation to explain the facts about the object of insurance. The insurer is obliged to pay the claim submitted by the insured in the event of a loss. To fulfill its obligations, the insurer needs to prove whether the fire that occurred was the cause of the loss for which he was responsible. The insurer can be released to pay compensation to the insured if it can be proven that the loss was caused by the insured's fault or negligence even though the policy states that the insurer is willing to bear all risks (full risk). This is in accordance with Article

294 of the KUHD. The insured's own faults are generally regular in Article 276 of the KUHD, which is an element that frees the insurer from his obligations

The factors that can cause the insurer to be irresponsible in the fire insurance agreement are intentional, error or intentional negligence by the insured, such as not disclosing material facts, namely information, information, circumstances and facts that affect the insurer's consideration in accepting or refuse an application for insurance coverage as well as natural factors such as earthquakes, volcanic eruptions, tsunamis, landslides, floods, hurricanes or storms.

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