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Reciprocal Duty Principle Implementation In Life Insurance

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ABSTRACT: Death is a risk that cannot be avoided by everyone. Death also causes several impacts, these impacts occur on the families left behind. This will be more severe if the risk of death is experienced by the head of the household who has been the backbone of the family. Therefore, losses that can later be suffered by family members will be transferred by taking life insurance. The problem faced is that the principle of utmost good faith is not implemented by the party who transfers the risk to his life, hereinafter referred to as the insured. The allegation arises because the form that should contain material facts from the insured is not filled in, even though there is a possibility that the insured did not fill out the form related to the material facts about himself due to his ignorance. In addition, there is the principle of reciprocal duty which should be able to provide legal protection to the insured on the principle of utmost good faith used by life insurance companies not to carry out their obligations. Based on the foregoing, it can be formulated the problem formulation of the characteristics of the principle of reciprocal duty in life insurance and the application of the principle of reciprocal duty in legal protection for the insured life insurance. The method in this study is a normative research with a statutory approach and primary legal materials consisting of legislation and secondary legal materials in the form of books, journals, online media, as well as the results of surveys, interviews, and observations which will later be categorized for carried out a thorough analysis.

KEYWORDS:*Life Insurance, Reciprocal Duty Principle, Insured, Insured.*

I. PRELIMINARY

This risk has the nature of uncertainty and of course there is a desire to provide protection or guarantee for this uncertainty. The way to provide this protection is by dealing with risk, avoiding risk, and finally by transferring risk, this risk transfer is known as insurance.

Death is a risk that cannot be avoided by everyone. Death also causes several impacts, these impacts occur on the families left behind. This will be more severe if the risk of death is experienced by the head of the household who has been the backbone of the family. Therefore, losses that can later be suffered by family members will be transferred by taking life insurance. The transfer of the risk of death is increasingly important because the period of time from which the risk occurs due to the death of the insured cannot be known. Concern occurs when the death occurs earlier than planned and results in the family not going as planned. For that you need life insurance.

Life insurance can protect the family's future travel as planned and protect the family's financial difficulties when the event in the form of death occurs. So it can be said that life insurance is a form of love from the insured to his family, because with life insurance, the family can feel the benefits of life insurance. Life insurance is one way to protect the future planning program of a family after the death of a family member, especially the death of the head of the family. However, there are several problems faced by the heirs who want to feel the benefits. The problem faced is that the principle of utmost good faith is not implemented by the party who transfers the risk to his life, hereinafter referred to as the insured. The allegation arises because the form that should contain material facts from the insured is not filled in, even though there is a possibility that the insured did not fill out the form related to the material facts about himself due to his ignorance. In addition, there is the principle of reciprocal duty which should be able to provide legal protection to the insured on the principle of utmost good faith used by life insurance companies not to carry out their obligations. Based on the above, the formulation of the problem can be made:

1. Characteristics of the principle of reciprocal duty in life insurance;
2. The application of the principle of reciprocal duty in the legal protection of the life insurance insured.

II. RESEARCHMETHODS

1. RESEARCH STAGES

This research is a normative juridical research or library law research by examining existing library materials(Soekanto, Soerjono; Mamudji 2006). So the first step is to search for legal materials. Both primary legal materials in the form of statutory regulations or secondary materials which can be in the form of books, journals, or other legal materials to conduct a literature study or legal materials obtained from field studies, namely by conducting surveys or interviews with parties related to research, namely at the office of the Financial Services Authority.

After getting the data obtained from the results of the research, the next thing to do is to collect and categorize legal materials. Because this study uses two approaches to perform the analysis. So the categorization is done based on the statutory and conceptual approach. Analysis of legal materials is carried out after the categorization. The final result that is expected after the analysis is of course the concept of applying the reciprocal principle in providing legal protection for the life insurance insured in Indonesia.

2. RESEARCH SITES

The location of the research was carried out in the cities of Surabaya and Jakarta with institutions namely the Financial Services Authority and Life Insurance Companies.

3. LEGAL MATERIALS

Legal materials that are used as objects of library research are divided into 3 (three) kinds, namely primary legal materials, secondary legal materials(Isnaeni 2016). In connection with this research, the legal materials that will be used are:

1. Primary legal materials, namely binding legal materials consisting of statutory regulations, both in the Insurance Law, KUHD, as well as implementing regulations;
2. Secondary legal materials, namely legal materials that provide an explanation of primary legal materials such as books, journals, dictates, and websites on the internet related toinsurance

After the legal materials as listed above have been collected, the data will be grouped and compiled and then described and analyzed.

III. DISCUSSION

1. Characteristics of the principle of reciprocal duty in life insurance;

The principle of Utmost Good Faith means the best of good faith. The risk transfer agreement states that there is a demand for the prospective insured to do the best of good faith. The insured recognizes himself and is obliged to state all matters related to the object of insurance, requested or not if these things can affect whether or not the insurance application is approved. So that good faith means that there is good faith to honestly state the questions posed by the underwriter. Meanwhile, utmost means the initiative of the insured to state things that are not asked by the underwriter if he knows the information causes the risk of the object of insurance to be greater(Wardana 2009).

The principle of utmost good faith is contained in Article 251 of the KUHD, which is about telling what is wrong and hiding things that are known to the insured, that information will cause the insurance agreement to fail if the insurer knows about it. The application of utmost good faith only burdens the insured. Of course this is not true because the principle of reciprocal duty applies which is a reciprocal obligation in life insurance so that the insurer must also have good faith by disclosing information related to the life insurance agreement.

Insurers have an obligation to disclose information related to life insurance agreements, both at the beginning of the agreement until the end of the agreement. If the insurer violates, the insurer must be responsible for the loss. The forms of the application of reciprocal duty for the insurer include(Subagiyo;Salviana 2016):

1. Disclosing the insured's bonus or relief;
2. Not closing life insurance as a sign of legal protection;
3. Disclosing true statements before the formation of the contract.

Reciprocal duty comes from the words reciprocity and duty. Reciprocity, the giving of benefits to another in return for benefits received, is a defining feature of social exchange(Molm 2007).A reciprocal action, namely providing benefits to the other party in return for the benefits received from the opposing party. Meanwhile, the definition of duty according to the Cambridge Dictionary is something that you have to do because it is part of your job or something that to you feel is the right thing to do(Budziszewski 2016).Based on this definition, duty means that one must do the right thing. Based on this understanding, it can be concluded that reciprocal duty is a principle that requires parties to repay the treatment of other parties who provide benefits with treatment that also provides benefits (reciprocity).

Reciprocal duty gives obligations to the parties in the unit-link-based life insurance agreement to carry out what is carried out by the opposing party. If the opposing party applies the utmost good faith principle, the other party must also apply it, or it can be interpreted that if the insured party implements the utmost good faith principle, the insurer must also apply the utmost good faith principle by informing and explaining related to the rights and management of the insured's investment or apply the provisions of article 251 of the KUHD to provide information to the insured.

Armin Falk and UrsFischbacher stated that the meaning of reciprocal is a behavior that is not justified to be selfish and only think about a profit. This is because reciprocal is a response to actions that are considered good or bad. This reciprocal action is carried out in accordance with the actions of a party. If the party does something bad, then reciprocal will also have a bad impact, whereas if the party who gets bad treatment will also do something bad to the perpetrator, then the party who gets good treatment will do good to the perpetrator (Falk; Fischbacher 2000). So from the statement above, it can be concluded from that reciprocal has two aspects, namely the results or consequences of an action and ongoing motivation (Falk; Fischbacher 2000).

2. The application of the principle of reciprocal duty in the legal protection of the life insurance insured.

Linda D.Molm, David R.Schaefer, and Jessica L. Collett add to the notion of reciprocal stated by Armin Falk and UrsFischbacker by stating that reciprocal can be done directly and indirectly. Reciprocal directly is given directly to the party who gave the bad thing or to the good thing (eg A gives something good to B, B replies to A). While reciprocal is indirectly given to another party who will later give it to the party who did the bad thing and the good thing (for example A gives something good to B, B gives it to C so that later C will give it to A) (Molm 2007).

Reciprocal is a natural action of humans, but of course there is no guarantee that reciprocal will occur. Therefore, it would be better if in certain circumstances there is an obligation so that this reciprocal becomes something that is mandatory. This principle is known as reciprocal duty. Reciprocal duty can be applied in various agreements. This is because the agreement also has a reciprocal nature, as well as the unit-link-based life insurance agreement.

The unit-link-based life insurance agreement, according to Article 246 of the KUHD, legally begins with the action of the insured. The insured is the party who has the initiative to transfer the risk of his death to the insurer by paying a premium. The insured's desire is usually stated in the insurance application letter given to the insurer. The Insurer in this case then provides a form that must be filled out by the Insured. The insured must also provide information to the insurer regarding material facts related to the risk, especially regarding his health condition. The principle of reciprocal duty obliges the insurer to also provide clear information related to unit-link-based life insurance, especially related to unit-linked products. The provision of clear information is because the insured has also provided an explanation of material facts, the insurer must also respond. Based on the discussion above, it can be said that the application of the principle of reciprocal duty also has an impact on the principle of utmost good faith. If the insured, as the party who took the initiative to enter into a unit-link-based life insurance agreement, has implemented the principle of utmost good faith towards the insurer, the insurer must also repay it and must apply the principle of utmost good faith to the insured. After submitting a letter of application for insurance, the next process is the process of granting approval from the insurer to carry out a unit-link-based life insurance agreement.The approval letter given by the insurer is the beginning of the signing of a unit-link-based life insurance agreement. After the parties have signed a unit-link-based life insurance agreement, the unit-link-based life insurance agreement has been legally and binding.

The unit-link-based life insurance agreement contains the rights and obligations of the parties. One of the obligations that must be carried out by the insured is to make premium payments to the insurer. If the insured makes a premium payment to the insurer, in this case it can be said that if the insured carries out his obligations to the insurer and based on the principle of reciprocal duty, the insurer must repay the insured's actions by providing a report on the management of unit-linked products every month.

The discussion related to the principle of reciprocal duty provides an understanding that in unit-linked life insurance, to provide legal protection to the insured as a party who has a weak position because he does not participate in making agreements, it is mandatory to apply the principle of reciprocal duty. If the insured has carried out his obligations to the insurer, the insurer is obliged to carry out his obligations to the insured, as well as if the rights of the insurer have been fulfilled, the insured's rights must also be fulfilled. Therefore, Article 251 of the KUHD can be said to be incompatible with the principle of reciprocal duty so that it is time for the OJK to make regulations related to the application of the principle of reciprocal duty to products in unit-linked life insurance.

The application of the principle of reciprocal duty carried out for the sake of equality between the parties in a unit-link-based life insurance agreement must be stated in a clause in the agreement. Therefore, the Financial Services Authority as the party that has the authority to supervise financial institutions, including insurance companies, should include in the regulations of the financial services authority regarding the provisions for the obligation to apply the principle of reciprocal duty in the agreement and conduct a thorough examination at the time of drafting the insurance agreement. soul-based unit link is not yet used.

IV. CONCLUSION

1. The characteristic of this principle of reciprocal duty is that it creates an obligation on the part of the parties to reciprocate the treatment of the other party. This characteristic will certainly prevent the parties to the agreement from experiencing losses due to the actions of the other party
2. The principle of reciprocal duty is basically a principle that can be used in general in every type of agreement that causes the parties to have an equal position and must give each other reciprocal good behavior from one party. However, in a unit-link-based life insurance agreement, the principle of reciprocal duty is more related to the application of the utmost good faith principle, where if one party applies the utmost good faith principle, the other party must also apply the utmost good faith principle. Although the application of the principle of reciprocal duty can also be applied to other actions besides the principle of utmost good faith.

V. SUGGESTIONS

1. The principle of reciprocal duty must be stated in a unit-link-based life insurance agreement through an equalization clause related to the rights and obligations of the parties;
2. The Financial Services Authority as a party that has the authority to supervise financial institutions, including insurance companies, should include in the regulations of the financial services authority regarding the provisions for the obligation to apply the principle of reciprocal duty in the agreement and conduct a thorough examination at the time of drafting the unit-link-based life insurance agreement. have not been used.

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