

Liability of the Insurer against the Insured Loss in Unit Link Based Life Insurance on The Basis of Default

Fries Melia Salviana¹, Krisnadi Nasution², Evi Kongres³

^{1,2,3}Doctoral of Law at 17 Agustus 1945 Surabaya

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

Unit-linked life insurance is regulated in Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products or Insurance Products Associated with Investments (hereinafter referred to as OJK Regulation No.23/POJK.05/2015) and Decisions Chairman of the Capital Market and Financial Institution Supervisory Agency Number KEP-104/BL/2006 concerning Unit Link Products (hereinafter referred to as Decree of the Chairman of Bapepam-LK No. KEP-104/BL/2006). Unit-linked life insurance is accepted by the public because unit-linked life insurance can provide returns if the term of the policy, the insurance agreement has expired and the consumer is in good health, the person concerned will receive a refund from the proceeds of his investment.

Article 11 of OJK Regulation No.23/POJK.05/2015 states that:

- a. When the coverage takes effect;
- b. Description of the agreed benefits;
- c. Method of payment of Premiums or Contributions;
- d. Grace period for payment of Premium or Contributions;
- e. The exchange rate used for Insurance Policies in foreign currency if the payment of Premiums or Contributions and benefits is linked to Rupiah;
- f. The time recognized as the time of receipt of payment of Premium or Contribution;
- g. Company policy that is determined if the payment of Premium or Contribution is made past the agreed grace period;
- h. The period when the Company is unable to review the validity of the insurance contract (incontestable period) on long-term Insurance Products;
- i. Cash value table, for Insurance Products marketed by Life Insurance Companies that contain cash value;
- j. Calculation of dividends on insurance policies or the like, for insurance products marketed by life insurance companies that promise dividends on insurance policies or the like;

- k. Clauses of termination of coverage, both from the Company and from policyholders, the insured, or participants, including the terms and causes;
- l. Terms and procedures for submitting a claim, including supporting evidence that is relevant and required in filing a claim;
- m. Procedures for settlement and payment of claims;
- n. Dispute settlement clauses which include, among other things, a settlement mechanism inside and outside the court and the selection of the domicile for dispute resolution; and
- o. The language used as a reference in the event of a dispute or difference of opinion, for an Insurance Policy that is printed in 2 (two) or more languages.

Therefore, the insured in unit-linked life insurance does not only enter into an insurance agreement or transfer of risk, but also an investment agreement.

Premium payments on unit-linked life insurance are not only used as a basis for risk transfer but also as initial unit-linked investment funds. The high public interest in unit-linked life insurance continues to develop every year, which can be seen in the growth of unit-linked insurance premium income which continues to increase as in 2015 where unit-linked insurance premium income was Rp. 57.21 trillion or an increase of 9.68% from the previous year of Rp 52.16 trillion. Based on the premium payments mentioned above, it can be said that unit-linked life insurance is a type of insurance that not only contains benefits for risk transfer but also has investment benefits. Investment regulation itself is regulated in the Law of the Republic of Indonesia Number 25 of 2007 concerning Investment (hereinafter referred to as Law No. 25/2007).

Article 1 number 1 of Law No. 25/2007 states that:

Investment is all forms of investment activities, both by domestic investors and foreign investors to conduct business in the territory of the Republic of Indonesia. While the definition of capital based on Article 1 number 7 of Law No. 25/2007 is an asset in the form of money or other forms that are not money owned by investors that have economic value. Therefore, the premium in unit-based life insurance which is partly allocated to be placed in a unit link for profit can be considered as capital as referred to in Article 1 point 7 of Law No. 25/2007.

The rapid development of unit-linked life insurance is followed by many problems. This can be seen from data on consumer services of the Financial Services Authority (hereinafter referred to as OJK) which receives complaints from consumers and reports on handling complaints submitted by insurance companies to OJK through the Consumer Education and Protection Reporting System (SIPEDULI) where the number of complaints related to life insurance unit link based is quite high. The main problems of complaints that are often submitted by consumers are related to objections to investment returns that are not in accordance with the percentage agreed upon or stated in the policy and the behavior of insurance agents who only promise profits without discussing the risks to be faced. In addition, insurance agents also often introduce unit-linked life insurance as a type of savings with higher interest when compared to other types of savings, so it can be said that many insured are disadvantaged because they do not have an understanding of unit-linked life insurance.

The problems most complained about by consumers related to unit-linked life insurance are as follows: 1) Agents who do not provide a comprehensive explanation of unit-linked life insurance; 2) Consumers have not received an insurance policy; 3) Fraudulent acts committed by insurance agents; 4) The absence of product transparency where the agent does not provide a detailed explanation regarding the characteristics, benefits, risks and costs; 5) Fund progress reports which do not include information regarding the overall costs charged to the insured; 6) There is no detailed calculation regarding the nominal that will be received if the insured terminates or redeems the policy; 7) There is no mention of investment performance as described to consumers.

These problems will of course result in losses for the insured. Of course, most of these losses are caused by the actions of the insurer who is a life insurance company. Therefore, the life insurance company should be responsible for the loss of the insured.

II. RESEARCH METHODS

1. RESEARCH STAGES

This research is a normative research or library law research by examining existing library materials (Soekanto 2014). 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.

2. PROBLEM APPROACH

The approach used in this research is the statutory approach, the case approach, the conceptual approach, and the philosophical approach (Marzuki 2016a).

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 such as: 1) Code of Civil law; 2) Commercial Code; 3) Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance; 4) Law of the Republic of Indonesia Number 8 of 1995 concerning the Capital Market; 5) Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislations; 6) Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number KEP-104/BI/2006 concerning Unit Linked Products; 7) Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector; 8) Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Insurance Product Marketing; 9) Financial Services Authority Regulation Number 67/POJK.05/2016 concerning Business Licensing and Institutional Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies; 10) Financial Services Authority Regulation Number 69/POJK.05/2016 concerning Business Conduct of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies; 11) Financial Services Authority Regulation Number 43/POJK.05/2019 concerning Good Corporate Governance for Insurance Companies; 12) Financial Services Authority Circular Letter No.2/SEOJK.07/2014 concerning Services and Settlement of Consumer Complaints to Financial Services Businesses; 13) Circular Letter of the Financial Services Authority Number 12/ SEOJK.07/2014 concerning Submission of Information in the Context of Marketing of Financial Services Products and/or Services; 14) Financial Services Authority Circular Letter Number 13/ SEOJK.05/2016 concerning Reporting of Insurance Products for Insurance Companies.

2. Secondary legal materials are legal materials that help to provide explanations related to primary legal materials with the aim of increasing understanding of these primary legal materials. Secondary legal materials used in research are the result of scientific work from previous researchers or books, journals, dissertations, and the internet (Soekanto, Soerjono; Mamudji 2006).

4. COLLECTION AND PROCESSING OF LEGAL MATERIALS

Legal material is information that has been collected through various searches according to the approach used. After finding the laws and regulations regarding these legal issues, the next step is to search for secondary legal materials, which can be in the form of books, journals, or online media to find theories and concepts related to legal issues. The last search is related to legislation or secondary legal materials from the time to find the historical history of the legal issue. After searching, the data is processed in the following way (Soekanto 2014) :

1. The preparation of all existing data needs to be collected so that it is easy to check whether all the required data is complete. The preparation of data must select data that are relevant to the research;
2. Data classification is an attempt to classify, classify, and select data based on certain classifications that have been made and determined by the researcher.

5. LEGAL MATERIAL ANALYSIS

The first analysis carried out is to analyze the laws and regulations related to legal issues to obtain the ontology and ratio legis of the provisions of these laws and regulations. If later it is found that there is a legal vacuum, deductive reasoning will be carried out with the discovery of analogies. Therefore, there is a need for an analysis of the theories and concepts found that are also related to the history that has to do with these legal issues (Soekanto 2014).

The main purpose of the analysis of legal materials is to know the meanings contained by the terms used in the laws and regulations conceptually, as well as to know their application in practice and legal decisions. This was done through two examinations. First, the researcher tries to get a new meaning contained in the relevant legal rules. Second, testing these legal terms in practice through analysis of legal decisions (Soekanto 2014).

Liability in civil law can be divided into two kinds. The first is liability on the basis of default and liability on the basis of unlawful acts. Moegni Djojodirjo declared liability on the basis of unlawful acts.

II. DISCUSSION

Accountability is not found in the Big Indonesian Dictionary, but what is found in the Big Indonesian Dictionary is responsibility. Responsibility in the Big Indonesian Dictionary is defined as a condition of being obliged to bear everything according to what happens when something happens to the other party (Tim Penyusun Kamus Bahasa Indonesia 2011).

Responsibilities are divided by Martono into three parts, namely accountability, responsibility, and liability. Responsibility in the sense of accountability is a responsibility that has to do with finance or trust. Responsibility in the sense of responsibility is responsibility in the sense of public law. While responsibility in the sense of liability is legal responsibility according to civil law (Martono 2007).

Goldie distinguishes the terms responsibility and liability. Responsibility refers to duty, which is a standard for fulfilling a social role determined by a certain legal system. While liability is used to refer to the consequences of an error or failure to carry out an obligation or to meet a certain standard that has been set (Goldie 1986).

Peter Mahmud Marzuki stated that the notion of responsibility in the sense of liability is defined as accountability which is a translation of liability/aansprakelijkheid and is a specific form of responsibility. Accountability focuses more on the position of a person or legal entity that is deemed to have to pay a form of compensation or compensation after a legal event or legal action occurs (Marzuki 2016b).

Liability in civil law can be divided into two kinds. The first is liability on the basis of default and liability on the basis of unlawful acts. MoegniDjojodirjo declared liability on the basis of unlawful acts. MoegniDjojodirjo associates liability like two disputing parties because one party feels aggrieved due to an unlawful act and requires the party causing the loss to bear the loss according to the lawsuit filed in court by the injured party. This arises as a violation of the law as stated in Article 1365 of the Civil Code. Article 1365 of the Civil Code states that every act violates the law that brings harm to others (Djojodirdjo 1982), with the provision of :

- a. The act that causes the loss is unlawful;
- b. The loss arises as a result of the act;
- c. The perpetrator is guilty;
- d. The norms that are violated have the aim of avoiding losses.

Based on this article, lawsuits can be filed, including:

- a. Compensation;
- b. Legal statements;
- c. Judge's orders or prohibitions.

Accountability consists of 4 principles, namely (Niewenhuis 1985):

- a. The principle of accountability on the basis of fault;
- b. The principle of accountability on the basis of the presumption of guilt;
- c. The principle of transferred liability;
- d. The principle of absolute liability or absolute liability.

The distinction from the principles of accountability can basically be seen in terms of procedural law in the form of the obligation to prove, namely by looking at whether or not there is an obligation to prove and who has to prove in the process of proof in court. In the first principle of accountability, namely the principle of liability, the basis of error. Proof of fault must be done by the injured party. In the principle of accountability on the basis of the presumption of guilt, the party who made a mistake is considered always guilty unless it can prove things that can absolve him of guilt. The principle of transferred accountability requires a person to be responsible for the actions of others or also called imputed liability (Sohofie 2011).

The principle of absolute liability that the party causing the loss regardless of whether or not there is an error or not seeing who is at fault or in other words, this principle of liability views the fault as irrelevant to be questioned in fact it exists or does not exist (Sohofie 2011). While J.H. Niuwenhuis divides liability into 3 (three) groups, namely (Niewenhuis 1985):

1. Liability based on fault;

This accountability rests on two pillars, namely breaking the law and wrongdoing. The person who causes harm to another person is responsible, as long as the loss is the result of a violation of a norm (a violation of the law) and the perpetrator can be regretted for having violated that norm (a mistake). Liability for wrongdoing requires the plaintiff to prove the defendant's guilt (found in the provisions of Article 1365 of the Civil Code regarding unlawful acts).

2. Accountability with reversed burden of proof;

This concept includes sharpened accountability. The plaintiff does not need to prove that the defendant was not careful enough, but on the contrary the defendant to avoid his liability must prove that he tried to be careful enough so that he cannot be blamed. The concept of accountability is contained in the provisions of Article 1367 paragraph (2) in conjunction with paragraph (5) of the Civil Code.

3. Risk accountability

Based on Article 1367 paragraph (3) of the Civil Code determines that the employer is responsible for losses caused by his subordinates committed within the scope of his duties. Risk liability must be based on:

- a. There is a relationship between subordinates and superiors. What is decisive here is the authority to give orders (instructions) to others. This authority can arise from work agreements, but also from public law (relationships between rulers and civil servants);
- b. The liability depends on the condition that the unlawful act was carried out in the performance of tasks by subordinates. The limitation imposed by the court is that there must be a connection between the unlawful act and the duties of a subordinate. The employer also remains liable for unlawful acts by his

subordinates when carrying out their duties despite the fact that the employer has expressly prohibited the act in question or even though the act was outside of official hours;

c. Accountability of Article 1367 paragraph (3) of the Civil Code requires that there are unlawful acts and mistakes of subordinates. Liability does not depend on a violation of norms or wrongdoing by the employer. The aggrieved party simply clings to evidence of unlawful acts by subordinates, the existence of a superior-subordinate relationship, and the fact that the duties of subordinates create opportunities to commit unlawful acts.

To determine the class of liability of the insurer for the loss of the insured, it is necessary to discuss the relationship between the insured and the insurer as business actors and consumers.

A unit-link-based life insurance agreement is a risk transfer agreement upon the death of the insured accompanied by investment management. In order to find out whether the insured and the insurer are business actors and consumers, it is necessary to first know the meaning of consumers and business actors themselves.

The definition of consumer according to Article 1 number 2 of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as Law No. 8/1999) is every person who uses goods and/or services available in the community, both for the benefit of himself, his family, other people, as well as other living things and not to be traded. Based on the understanding of consumers according to Article 1 number 2 of Law No. 8/1999, it can be understood that the subject element referred to as a consumer means anyone who has the status of a user of goods and services. The term "person" actually raises doubts as to whether it is only an individual person who is commonly called a *natuurlijke* person or is also a legal entity.

According to AZ. Nasution, the intended person is a natural person not a legal entity, because those who use, use, and/or utilize goods and/or services for the benefit of themselves, their families, other people, or other living creatures are not for trading only natural people or humans (Nasution 1999). On the other hand, according to Sidharta, the most appropriate thing is not to limit the understanding of consumers to individuals, but also to include business entities with a broader meaning than legal entities (Sidharta 2007). Another important element that is also contained in the definition of a consumer according to Article 1 point 2 of Law No. 8/1999 that needs to be analyzed is the requirement not to be traded which indicates that he is the final consumer and at the same time distinguishes him from intermediate consumers.

Gunawan stated that there are 3 definitions of consumers, namely (Gunawan 2000):

1. Consumers in the general sense, namely users, users, and or beneficiaries of goods and services for certain purposes;
2. Intermediate consumers, namely users, users and or beneficiaries of goods and or services to be produced into other goods or services to trade them for commercial purposes. Consumers are the same as business actors;
3. End consumers, namely users, users and or beneficiaries of consumer goods and or services to meet the needs of themselves, their families or households, and not to be re-traded (Sutedi 2008).

Article 1 number 23 of Law No. 40/2014 states that the insured is the party facing the risk as stipulated in the insurance agreement or reinsurance agreement, while Article 1 number 22 states that the policyholder is a party who binds himself based on an agreement with an insurance company, sharia insurance company, reinsurance company, or sharia reinsurance company to obtain protection or risk management for themselves, the insured, or other participants. This internal statement means that the insured has a party who binds himself to the insurer as the policy holder to enter into a unit-link-based life insurance agreement to use the services and products of the insurer in the form of life insurance combined with unit-linked products. So it can be said that the insured is a user of the services and products of the insured and can be said to be the insured consumer.

Article 1 point 3 No.8/1999 provides an understanding of business actors, namely every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly. - together through agreements to carry out business activities in various economic fields.

Article 1 number 14 of Law No. 40/2014 states that insurance companies are insurance companies, sharia insurance companies, reinsurance companies, sharia reinsurance companies, insurance brokerage companies, reinsurance brokerage companies, and insurance appraisal companies. While life insurance is a business that provides risk management services that provide payments to policyholders or other entitled parties in the event that the insured dies or remains alive or other payments to policyholders, the insured, or other entitled parties in the event that the insured dies or remains alive. life, or other payments to the insured, or other entitled parties at a certain time as regulated in the agreement, the amount of which has been determined and/or is based on the results of fund management. Based on the statement above, it can be stated that a life insurance company is a business actor with a business in the field of risk management services.

Article 4 of Law No. 8/1999 states regarding consumer rights, namely:

- a. The right to comfort, security, and safety in consuming goods and or services;
- b. The right to choose goods and or services and to obtain such goods and or services in accordance with the exchange rate and the promised conditions and guarantees;

- c. The right to correct, clear, and honest information regarding the conditions and guarantees of the goods and or services used;
- d. The right to have their opinions and complaints heard on the goods and/or services used;
- e. The right to get advocacy, protection and efforts to resolve consumer protection disputes properly;
- f. The right to receive consumer guidance and education;
- g. The right to be treated or served correctly and honestly and not discriminatory;
- h. The right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly;
- i. Rights regulated in the provisions of other laws and regulations.
- j. Consumer obligations refer to Article 5 of Law No. 8/1999, namely:
- k. Read and follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety;
- l. Have good faith in making transactions for the purchase of goods and/or services;
- m. Pay according to the agreed exchange rate;
- n. Follow legal efforts to settle consumer protection disputes properly.

The insured who is a consumer must also get the rights as stipulated in Article 4 of Law No.8/1999 and carry out their obligations as stipulated in Article 5 of Law No.8/1999. One of the rights of the insured is to obtain compensation if he suffers a loss and to obtain appropriate settlement efforts, and to obtain advocacy, clear information, and comfort on the object of unit-linked life insurance that he chooses as a means of risk transfer and investment.

Insurers' rights as business actors refer to Article 6 of Law No. 8/1999, namely:

- a. The right to receive payments in accordance with the agreement;
- b. The right to obtain legal protection from the actions of consumers who have bad intentions;
- c. The right to conduct proper self-defense in the legal settlement of consumer disputes;
- d. The right to rehabilitate the good name if it is not legally proven that the consumer's losses are not caused by the services traded;
- e. Rights regulated in the provisions of other laws and regulations.
- f. The obligations of business actors refer to Article 7 of Law No. 8/1999, namely:
- g. Have good intentions in carrying out their business activities;
- h. Provide true, clear, and honest information regarding the benefits and warranties of the products offered;
- i. Treat and serve consumers honestly and non-discriminatory;
- j. Provide compensation, compensation, or compensation for losses suffered by consumers;
- k. Provide compensation, compensation, and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

The rights for business actors that need to be emphasized are related to the rights owned by business actors to obtain legal protection from consumer actions with bad intentions. If it is implemented in a life insurance agreement, the insurer as a business actor can refuse to carry out his obligation to pay the sum insured if it is known that the insured does not have good intentions. However, good faith is not only owned by the insured but also the insurer as a business actor by way of the insurer must explain completely and correctly to the insured regarding the condition of the object of insurance. The obligation of business actors that must also be carried out by the insurer is regarding the provision of compensation if the insured suffers a loss.

Article 8 of Law No. 8/1999 states that the actions that are prohibited from being carried out by business actors include:

- a. Trading goods/services that are not in accordance with the standards in the applicable laws and regulations;
- b. Trading in goods/services that are not in accordance with the promises stated in the information, advertisements and promotions;
- c. Offer, promote, advertise that is not true;
- d. Offer, promote, advertise misleading;
- e. Offering goods/services by coercion or other means that can cause physical and psychological disturbances to consumers.
- f. Producing advertisements that deceive consumers

Insurers as business actors are also certainly not allowed to do prohibited acts, and carry out obligations and can get their rights as regulated by Law No. 8/1999. Another one that is also related to Law No. 8/1999 is related to the inclusion of an exoneration clause in unit-linked life insurance agreements. This is because the unit-link-based life insurance agreement is a standard agreement so that the clauses contained in the unit-link-based life insurance agreement are standard agreements.

Article 1 number 10 of Law No. 8/1999 formulates the definition of standard as the rules or provisions and conditions stipulated by business actors in the agreement, binding and providing obligations to be carried out by consumers. A unit-link-based life insurance agreement, which is also a standard agreement, of course also contains clauses made unilaterally by the insurer or referred to as a standard agreement.

The clauses made unilaterally based on the explanation above will certainly not cause problems if the clauses are not burdensome. The clauses that are considered burdensome are known as exoneration clauses, which are translated by Mariam DarusBadruzaman from the term *exoneratie* clause used in Dutch. Exoneration is a noun from the verb to exonerate which means to free or to clear. So actually to exonerate has the same meaning as to exempt whose noun exemption is used in the term exemption clause. However, it turns out that the term exoneration clause has not been found in English literature. So what is meant by the exoneration clause according to Mariam DarusBadruzaman is the responsibility of the creditor (Badruzaman 1981).

Kumar gives a definition of exclusion clause as a clause of a contract which purports to protect the proferens absolutely or in a limited manner against liability for breach of contract, or damages, or exclude his liability if the action is brought after the stipulated time (Kumar 1986). Kumar's definition of exclusion clause is a clause that protects a party in absolute or limited way from liability for breach of the agreement, or loss, or excludes its obligations if the action is taken after the specified time.

David Yates deliberately prefers the term exclusion clause to an exemption clause and gives the meaning of an exemption clause as any term in a contract restricting, excluding or modifying a remedy or a liability arising out of a breach of a contractual obligation (Yates 1982). Thus, David Yates provides an understanding that an exclusion clause is a clause that limits, excludes, or modifies legal remedies or obligations arising from breaches of contractual obligations. Banes provides a definition of exculpatory clause as a provision in a contract that attempts to relieve one party to the contract from liability for the consequences of his or her own negligence (Banes 1987). Based on the Banes understanding, Banes states an exculpatory clause as a provision in an agreement that tries to free one of the parties to the agreement from responsibility for the consequences of his own negligence.

Sutan Remy Sjahdeini concluded regarding the exclusion clause as a clause that aims to release or limit the responsibility of one party to the claim of the other party in the event that the person concerned does not or does not properly carry out his obligations specified in the agreement (Sjahdeini 2009). These clauses can appear in various forms. This clause can be completely freed from the responsibility that must be borne by his party in the event of a breach of promise. There can also be a time limit for the aggrieved person to be able to file a lawsuit or compensation. In the latter case, the time limit is often shorter than the time limit determined by law for a person to be able to file a claim or compensation. The exception to this clause is the force majeure clause which is justified by law (Sjahdeini 2009). The regulation regarding this burdensome clause is also contained in Law No. 8/1999.

Article 18 of Law No. 8/1999 which contains a limitative provision that business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement where the standard clause results in:

- a. Transfer of responsibilities of business actors;
- b. To state that business actors have the right to refuse to return goods purchased by consumers;
- c. To declare that business actors have the right to refuse to return the money paid for goods and/or services purchased by consumers;
- d. To declare the power of attorney from consumers to business actors, either directly or indirectly, to take all unilateral actions related to goods purchased by consumers in installments;
- e. Regulates the matter of proving the loss of the use of goods or the use of services purchased by consumers;
- f. Give rights to business actors to reduce the benefits of services or reduce the assets of consumers who are the object of buying and selling services;
- g. To declare that consumers are subject to regulations in the form of new, additional, continued, and/or follow-up changes made unilaterally by business actors while consumers are using the services they have purchased;
- h. Stating that the consumer authorizes the business actor to impose mortgage, lien, or guarantee rights on goods purchased by consumers in installments.

Article 18 paragraph 2 of Law No. 8/1999 contains a limitative provision that prohibits business actors from including standard clauses whose outlines or forms are difficult to see or cannot be read clearly, or whose disclosures are difficult to understand. Based on the explanation of Article 18 paragraph 2 of Law No. 8/1999 above, it can be understood that the term and definition of the standard clause is not the same as the meaning of the exoneration clause. This means that standard clauses are clauses that are made or included unilaterally in an agreement by business actors, but their contents may not lead to an exoneration clause. So, the standard clause emphasizes the procedure for making or including it unilaterally in the agreement, not on the content of the

agreement, while the exoneration clause does not only emphasize the procedure for making or including it in the contract, but also its contents aimed at transferring the obligations or responsibilities of business actors.

Strictly speaking, Article 18 paragraph 3 of Law No. 8/1999 contains provisions for sanctions that any standard clause that has been set by business actors in documents or agreements containing provisions prohibited in Article 18 paragraph 1 and paragraph 2 of Law No. 8/1999 is null and void when viewed from the law of the agreement. The substance of Article 18 paragraph 3 of Law No. 8/1999 reflects the reaffirmation of the principle of freedom of contract as regulated in Article 1320 in conjunction with Article 1337 of the Civil Code. The juridical consequence is that any agreement that contains a standard clause which is prohibited by Article 18 paragraph 1 of Law No. 8/1999 or which has a prohibited form or format based on Article 18 paragraph 2 of Law No. 8/1999 is considered to have never existed and is not binding on the parties, namely business actors and consumers who make commercial agreements for these goods and/or services. Therefore, business actors are obliged to adjust these provisions by changing the contents of the clauses deemed detrimental to one party by limiting the implementation of the obligations of the other party, especially the party making the agreement. Article 18 of Law No. 8/1999 states that the submission of consumers to regulations in the form of new, additional, continued, and/or follow-up changes made unilaterally by business actors when consumers use the services they buy is also an exoneration clause.

Liability based on unlawful acts as stated by Article 1365 of the Civil Code when associated with Law No.8/1999 states that the exoneration clause is a clause that can be canceled because it is contrary to Article 18 of Law No.8/1999 regarding the inclusion of standard clauses which are considered detrimental to insured.

III. CONCLUSION

Insured losses associated with life insurance companies are mostly related to the inclusion of the exoneration clause contained in the agreement. In addition, losses can also occur due to the actions of the life insurance company. The inclusion of this exoneration clause of course violates the rules regarding consumer protection so that it meets the criteria as a violation of the law and has the impact of liability from the life insurance company to the insured.

IV. SUGGESTIONS

The authority of the financial services authority in this case should be emphasized even more before the unit-link-based life insurance agreement is used in the market so that the insured's loss can be avoided. But if the loss has occurred, the insured can file a lawsuit against the law.

REFERENCES

Legislation:

- [1] Indonesia Commercial Code
- [2] Indonesia Civil Code
- [3] Law Number 40 of 2014 Concerning Insurance
- [4] Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance;
- [5] Law of the Republic of Indonesia Number 8 of 1995 concerning the Capital Market;
- [6] Law of the Republic of Indonesia Number 15 of 2019 concerning Amendments to Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislations;
- [7] Decree of the Chairman of the Capital Market and Financial Institution Supervisory Agency Number KEP-104/BI/2006 concerning Unit Linked Products;
- [8] Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector;
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