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The Principle of Indemnity in Fisheries Insurance to Adjust the Interests of the Insured and Insurer

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ABSTRACT : This research was conducted due to unresolved issues in previous studies. The unanswered problem is how to regulate the adjustment of interests between the insured and the insurer in order to fulfill the principle of indemnity. Therefore, the urgency of this study lies in determining the scope of implementation of the principle of indemnity and its regulation in aligning the interests of the insured and the insurer. The method used is normative legal research with a statutory and conceptual approach. The scope of fisheries insurance in this study is to transfer the risk of loss in the event of an incident occurring during fishing, fish farming, and salt production activities. The risks faced by fishermen, fish farmers, and salt farmers include the loss or damage of fishing, aquaculture, and salt production facilities; occupational accidents or loss of life of fishermen, fish farmers, and salt farmers; and other types of risks as regulated by the Ministerial Regulation. The causes of such risks include natural disasters, fish disease outbreaks, the impacts of climate change, and/or pollution.

KEYWORDS : *Principle of Indemnity; Fisheries Insurance; Regulation; Insured; Insurer*

I. INTRODUCTION

The characteristic of fisheries insurance as an effort to transfer risk for pond farmers is by shifting the risk of loss from the farmers to the insurance company through a contractual agreement between the two parties. This risk transfer essentially involves shifting the risk of losses faced by pond farmers when harvest yields do not meet expectations due to uncertain events such as floods, disease outbreaks, and/or pollution.

Another distinctive characteristic is that fisheries insurance is generally mandated by the government. This obligation is stipulated in Law Number 7 of 2016 concerning the Protection of Fishermen, Fish Farmers, and Salt Farmers, hereinafter referred to as Law No. 7/2016. The Ministry of Marine Affairs and Fisheries (KKP) subsequently implemented this through Ministerial Regulation of Marine Affairs and Fisheries Number 18 of 2016 concerning Risk Protection Guarantees for Fishermen, Fish Farmers, and Salt Farmers, hereinafter referred to as Ministerial Regulation No. 18/2016. Within this regulation, there is a Fisheries Insurance Program for Small-Scale Fish Farmers (APPIK). Therefore, fisheries insurance is a form of loss insurance that falls under social insurance. This is in contrast to the usual nature of loss insurance, which is generally voluntary and not mandatory.

The concept of insurance as stipulated in Article 246 of the Indonesian Commercial Code (KUHD) refers to the transfer of risk, which can take place once the insured has paid the premium to the insurer. The issue arises in the findings of the research as presented in the second research question. [1]

The transfer of risk must indeed be executed once the premium has been paid to the insurer. However, the problem lies in the imbalance between the premium paid by the insured and the compensation provided by the insurer. Insurers often consider that the compensation to be paid is disproportionately high compared to the premium contributed by the insured. As a result, many insurance companies are unwilling to enter into fisheries insurance agreements with pond farmers for this reason.

In fact, agricultural insurance is known to be a form of compulsory social insurance, regulated under Regional Regulations. Therefore, the research problems formulated are as follows:

1. What is the scope of implementation of the principle of indemnity in fisheries insurance?
2. How is the principle of indemnity applied in fisheries insurance to regulate the alignment of interests between the insured and the insurer?

II. THEORETICAL REVIEW

1. Principle of Indemnity

The insurer will provide compensation funds so that the insured can be restored to the financial position they were in before the occurrence of a specific event that caused the loss. This principle is often referred to as the principle of indemnity**.** The essence of the principle of indemnity is balance — a balance between the amount of compensation and the actual loss suffered by the insured, and a balance between the sum insured and the actual value of the insured object. This principle applies only to loss insurance and does not apply to sum insurance (life insurance), because in sum insurance, the insurer's obligation is to pay a fixed amount of money as determined at the time the agreement was made.

2. Fishiries Insurance

Based on Law Number 31 of 2004 on Fisheries, as amended by Law Number 45 of 2009, Article 30 paragraph (1) stipulates that *"The Government may provide protection to fishermen, fish farmers, and/or other parties engaged in fisheries business activities in the form of insurance."* [2]

If this provision is linked to Article 1 point 1 of Law Number 40 of 2014 on Insurance, which defines insurance as an agreement between two or more parties, in which the insurer binds itself to the insured, upon receipt of an insurance premium, to provide compensation for losses arising from an uncertain event, it can be concluded that:

Fisheries insurance is a form of protection provided by the government or insurance companies for fishermen, fish farmers, and other fisheries business actors, through an agreement between the insurer and the insured, in which the insurer, upon receiving a premium, is obliged to provide compensation or benefits for losses arising from uncertain risks in fishing or aquaculture activities, such as natural disasters, work accidents, or fish disease outbreaks. [3]

3. The insurer

The insurer, as stated in Article 246 of the Indonesian Commercial Code (KUHD)**,** binds itself to the insured, upon receiving a premium, to provide compensation for any loss, damage, or failure to obtain the expected profit, which may be suffered due to an uncertain event.

Meanwhile, in Law Number 40 of 2014 on Insurance, the term "insurer" is not explicitly used; instead, it is directly referred to as an insurance company, which is defined as either a general insurance company or a life insurance company **(**Article 1 point 15 of Law No. 40 of 2014**).** Furthermore, "insurance business" is described as covering services in risk coverage or risk management, reinsurance of risk, marketing and distribution of insurance or sharia insurance products, consulting and insurance intermediation, sharia insurance, reinsurance or sharia reinsurance, or loss assessment for insurance or sharia insurance **(**Article 1 point 5 of Law No. 40 of 2014).

4. The Insured

The insured, as stated in Article 246 of the Indonesian Commercial Code (KUHD)**,** is the party who pays the premium and receives compensation for any loss, damage, or failure to obtain the expected profit, which may be suffered due to an uncertain event. Meanwhile, in Law Number 40 of 2014 on Insurance**,** Article 1 point 23 stipulates that the insured is the party exposed to risk as specified in an insurance agreement or a reinsurance agreement. The insured may be regarded as the policyholder if they personally sign the insurance agreement, and not as the policyholder if the agreement is signed by a third party.

II. METHODOLOGY

This research is normative legal research using a statute approach, which is carried out by examining all laws and regulations related to the legal issue under study (Marzuki, 2018), as well as a conceptual approach, which is based on doctrines and perspectives that have developed within the field of law. By studying these, it is expected that the researcher will identify ideas relevant to the issue at hand. The resulting understanding will serve as a foundation for the researcher to conduct systematic interpretation of all legal materials, both primary and secondary. Subsequently, the researcher will be able to resolve the legal issues being examined. [4]

III. RESULTS AND DISCUSSIONS

1. The Scope of Implementation of The Principle of Indemnity in Fisheries Insurance

The definition of fisheries insurance is stated in Article 1, point 26 of the Law of the Republic of Indonesia Number 7 of 2016 concerning the Protection and Empowerment of Fishermen, Fish Farmers, and Salt Farmers (Law No. 7/2016), namely an agreement between fishermen or fish farmers and an insurance company to bind themselves to the coverage of risks in fishing or fish farming activities. The definitions of fishing and fish farming are contained in Article 1, points 8 and 9 of Law No. 7/2016.

Fishing is the activity of obtaining fish from waters that are not under cultivation, using methods and tools that uphold the principles of sustainability and conservation, including activities involving vessels for loading, transporting, storing, cooling, handling, processing, and/or preserving fish. Fish farming refers to any person whose livelihood involves cultivating freshwater fish, brackish water fish, or marine fish. [5]

The scope of discussion in this journal focuses on insurance related to fish farming, as the insured in this type of fisheries insurance are fishpond farmers. Article 7(1) of Law No. 7/2016 stipulates that fish farmers, as referred to in Article 5(1) of the same law, include small-scale fish farmers, fishpond land cultivators, and fishpond landowners.

Articles 10 and 11 of Law No. 7/2016 provide that the central and regional governments shall establish policies and are prohibited from formulating policies that contradict the efforts of protecting and empowering fishermen, fish farmers, and salt farmers. The planning of such protection and empowerment must, at a minimum, include policies and strategies. One such strategy, as stipulated in Article 12(2) of Law No. 7/2016, involves providing risk coverage for fishing, fish farming, and salt production (in this context, fish farming).

Abbas Salim defines insurance as a willingness to accept small, definite losses in order to substitute for large, uncertain losses. Simply put, in insurance, a person is willing to incur a small present loss to protect against potentially large future losses. These large potential losses are transferred to the insurance company (Salim, 2000).

Emmy Pangaribuan states that insurance is a risk-sharing mechanism chosen by individuals because it is lighter to share the loss in value of property among many people rather than bear it alone, and it provides certainty regarding the stability of the property's value by transferring the risk to a company, especially when the individual is unable to bear the risk independently [6].

According to Article 246 of the Indonesian Commercial Code (KUHD), insurance is a contract between the insured and the insurer to transfer the insured's risk to the insurer in exchange for the payment of a premium due to an uncertain event. Article 1(1) of Law No. 40/2014 states that insurance is a contract between an insurance company and a policyholder, with the payment of premiums, to provide compensation or benefits due to an event.

Based on its purpose, insurance can be divided into two types: commercial insurance and social insurance. Social insurance is managed to provide social guarantees to the public, while commercial insurance is operated as a business to earn profit. Commercial insurance is further divided into general insurance and life insurance. [7] Based on the above explanation, fisheries insurance agreements can be classified as general (loss) insurance because the legal protection provided is related to the losses suffered by fishpond farmers.

General insurance aims to transfer the risk of loss, damage, or loss of expected profit due to an unforeseen event. Article 246 of the KUHD aligns with the definition of general insurance, while Article 247 of the KUHD classifies insurance into fire insurance, insurance against hazards threatening unharvested agricultural products, maritime and shipping hazard insurance, and transportation insurance by land, river, and inland waters.

Article 268 of the KUHD stipulates that the insured object must be assessable in monetary terms, subject to risk, and not excluded by law. In general insurance, there is also the principle of insurable interest, which requires a legal relationship between the insured and the insured object, as stated in Article 250 of the KUHD, with the legal consequence that the contract is null and void if no such interest exists. Article 250 of the KUHD also implies the principle of utmost good faith, meaning the insured, having an interest in the insured object, is deemed to know the object and must disclose all material facts and not conceal them.

Another special characteristic of general insurance is the principle of indemnity, as stated in Article 253 of the KUHD, which limits compensation so that it does not exceed the value of the insured object. The types of general insurance regulated in the KUHD include fire insurance, insurance against hazards to unharvested crops, and transportation hazard insurance by sea, land, river, and inland waters. General insurance types not regulated in the KUHD include motor vehicle insurance and liability insurance.

Article 30(1) of Law No. 7/2016 states that the central and regional governments, within their respective authorities, shall provide protection to fishermen, fish farmers, and salt farmers against the risks they face while fishing, fish farming, and salt production. These risks include the loss or damage of fishing, aquaculture, and salt production facilities; occupational accidents or loss of life; and other types of risks stipulated by ministerial regulation. The causes of such risks include natural disasters, fish disease outbreaks, climate change impacts, and/or pollution.

Protection against risks to fishing and fish farming facilities and other types of risks is provided in the form of fisheries insurance. However, under Article 32(1) of Law No. 7/2016, the central and regional governments, within their respective authorities, may assign state-owned or region-owned enterprises in the insurance sector to implement fisheries and salt production insurance. These state-owned enterprises, acting as insurers appointed by the government, will enter into insurance contracts with fishpond farmers as the insured, who have the right to receive compensation payments and are obligated to pay premiums. The state-owned enterprise, as the insurer, has the right to receive premium payments from the insured but is also obliged to pay compensation.

The application of the principle of indemnity in fisheries insurance means that the insurance company provides compensation in accordance with the actual losses suffered by fishermen or fish farmers due to covered risks, so that their financial position is restored to what it was before the loss occurred, without any element of profit.

2. the principle of indemnity applied in fisheries insurance to regulate the alignment of interests between the insured and the insurer

As stated in Articles 252, 253, and 278 of the Indonesian Commercial Code (KUHD), the insurer will provide compensation funds so that the insured can be restored to their financial position prior to the occurrence of a specific event that caused the loss. This principle is often referred to as the principle of indemnity. The essence of the indemnity principle is balance — a balance between the amount of compensation and the actual loss suffered by the insured, as well as a balance between the sum insured and the actual value of the insured object. This principle applies only to loss insurance and does not apply to sum insurance (life insurance), because in sum insurance the insurer's obligation is to pay a predetermined amount of money.

Fisheries insurance is one of the manifestations of government protection related to safeguarding against risks that may be experienced by fish farmers due to uncertain events that could potentially cause losses in the future. The definition of a fisheries insurance agreement is regulated in Article 1, point 29 of Law No. 7 of 2016, which states that Fisheries Insurance is an agreement between fishermen or fish farmers and an insurance company to bind themselves to the coverage of risks in fishing or fish farming activities. Thus, it can be concluded that the parties involved in fisheries insurance are fishermen, if the insurance relates to fishing, and fish farmers, if it relates to fish farming. In this case, the party in question is, of course, the fish farmer. The insured is the fish farmer, who transfers the risk by paying a premium in order to receive compensation in the future, while the insurer is the insurance company, which receives the transfer of risk through the payment of the premium and provides compensation. This is regulated in Article 246 of the Commercial Code.

The insurer must have the status of a legal entity, which may take the form of a limited liability company, a state-owned enterprise, or a cooperative. The insured may have the status of an individual, a partnership, or a legal entity, whether as a company or a non-company. The insured holds the status of the owner or an interested party in the property being insured.

The object may consist of goods, rights, or interests attached to the goods, as well as a sum of money referred to as the premium or compensation. Within the object of insurance, there are objectives pursued by the parties. The insurer aims to receive payment of a premium as compensation for assuming the risk, while the insured aims to be free from risk and to obtain compensation in the event of a loss to their property.

Article 30 of Law No. 7/2016 stipulates that the Government facilitates insurance for fishermen, fish farmers, and salt farmers, covering risks of accidents/death, loss or damage to fishing vessels, aquaculture facilities, and salt farming enterprises. The funding for premiums may come from the State Budget (APBN), Regional Budgets (APBD), or other legitimate sources (Article 31 of Law No. 7/2016).

Fishermen or fish farmers may register through the Regency/City Marine and Fisheries Office, Joint Business Groups (KUB) or Fish Farmers Groups (Pokdakan), or agents/insurance companies in cooperation with the Ministry of Marine Affairs and Fisheries (KKP) by filling out a registration form and attaching identification documents, a business certificate, and other required documents. At the time of registration, the premium amount is determined. The premium is set by the insurance company based on the type of insured object (vessel, equipment, or fish), the sum insured, and the risk profile. These factors (type of insured object, sum insured, and risk profile) should comply with the principle of indemnity, meaning that for the same type of insured object, the premium amount may vary if there are differences in the sum insured and risk profile, This provision is stipulated in Minister of Marine Affairs and Fisheries Regulation No. 18/PERMEN-KP/2016.

This Fisheries Insurance Program consists of several types: full subsidy (the premium is paid directly by the government through the State Budget (APBN) or Regional Budgets (APBD) to the insurance company), partial subsidy insurance (the government covers part of the premium and the participant pays the remainder via bank transfer, cash deposit to the insurance company, or payment through a group coordinator), and, lastly, self-financed insurance, in which the entire premium is paid by the participant according to the chosen sum insured.

Munir Fuady states that the concept of compensation in civil law can be divided into two approaches: general compensation and special compensation. General compensation refers to compensation applicable to all cases, while the special approach to compensation applies to certain obligations, whether arising from breach of contract or from unlawful acts, acts committed by others, owners of animals, owners of collapsed buildings, compensation for the family of a person who has been killed, disabilities or bodily injuries, and acts of defamation. Special compensation arises from a breach of contract when one party to an agreement fails to fulfill the terms set out in the contract, causing losses to the other party. Such losses do not occur due to force majeure (Fuady, 2013).

Sri Rejeki Hartono explains that the fundamental function of insurance is as an effort to manage uncertainty over specific losses—particularly pure losses and not speculative losses—so that the concept of risk can be defined as uncertainty regarding whether or not a certain event will occur. [8]

The ability of an insurance company to bear risks depends on its financial strength. Insurers may cover risks far exceeding their own capital capacity and still be able to pay claims through the practice of risk distribution with other insurance companies, known as reinsurance agreements.

An insurance company acts as the risk bearer and, in carrying out its business, deals directly with the insured or through insurance brokers. The insurer can calculate the probability percentage of a particular claim occurring based on the degree of risk and the company's past experience. Using these statistics, the insurer can also determine the amount of compensation to be paid. This amount is then charged as a premium to the insured, along with other costs. [9]

Part of the premiums collected by the insurance company, which acts as the insurer for all insured parties, is used to pay claims arising from insured parties who have suffered losses or whose claims have matured, as well as to fulfill the rights of beneficiaries. Another portion is allocated to build claim reserves for potential future claims, to cover operational expenses, and to generate profit for the insurer. The insured pays the premium as a fixed cost regardless of whether the insured event occurs. For the insured, paying an insurance premium as a fixed cost ensures that any potential loss or damage during the coverage period will be borne by the insurer, regardless of whether the total claims are proportionate to the premium paid. [10]

Abdulkadir Muhammad states that the theory of compensation in insurance is closely related to the issue of the event (evenemen), as compensation will be granted if the loss is directly linked to an event covered by the insurer and stipulated in the policy. The event is the cause of the loss. The amount of compensation given must reflect the principle of balance. In unit-linked life insurance, this balance applies to both the death benefit (paid to heirs or beneficiaries upon the insured's death) and the calculation of unit-linked investment gains, which are agreed upon and stated in the policy according to the premium contributions. [11]

The purpose of an insurance contract is to indemnify the insured. Therefore, the insured must be able to prove that they have suffered an actual loss. Furthermore, the insured must have an insurable interest, as recognized under the principle of insurable interest. Article 250 of the Indonesian Commercial Code (KUHD) stipulates that the insurer is not obliged to provide compensation if there is no interest between the insured and the insured object. Such an interest must exist not only at the inception of the insurance contract but also at the time the loss occurs. Therefore, the insured must be able to prove a relationship of interest with the insured object. In addition to the requirement of insurable interest, the insured must also prove that the loss occurred as a consequence of an event whose cause is covered under the insurance contract or specified in the policy.

The payment of compensation by the insurer is also contingent upon the absence of an exoneration clause. An exoneration clause limits the liability of the insurer. Events included in the exoneration clause that release the insurer from the obligation to provide compensation are regulated in Article 249 of the KUHD, which states:

The insurer is not obliged to cover damage or loss directly caused by defects, natural decay, or the inherent nature of the insured object, unless specifically insured against.

Additionally, Article 276 of the KUHD provides if Any loss or damage caused by the fault of the insured shall not be borne by the insurer. The insurer may still retain or claim the premium if the risk has already been assumed. The final exoneration clause applies if the insured is deemed not to have acted in utmost good faith, as stipulated in Article 251 of the KUHD.

Based on the above explanation, the concept of compensation in the law of obligations differs from that in insurance law. In the law of obligations, compensation arises when one party fails to fulfill their obligations. In contrast, in insurance law, compensation is an obligation that must be fulfilled by the insurer when an insured event occurs that causes a loss to the insured—provided that no exoneration clause applies and that the principles of insurable interest and proximate cause are met. Based on the concept of providing compensation in insurance, during the data entry process at the time of registration, the insurer should consider the potential risks and the estimated amount of losses that may be incurred. If the insurer is unable to make such estimations, the government—represented in this case by the local Marine and Fisheries Office—should assist in providing an overview of the potential losses that may arise, and may even directly incorporate such information into regulations. In this regard, it is not only the interest of the insured in receiving compensation that must be considered, but also the interest of the insurer in obtaining premium payments. If the insurance is in the form of a full or partial subsidy, the government, through the Marine and Fisheries Office, which has knowledge of the impact of events on the insured object, should provide an adequate subsidy amount at the time of premium payment so that the insurance company does not suffer losses and the principle of indemnity can be properly implemented.

IV. CONCLUSION

The scope of implementing the principle of indemnity in fisheries insurance covers capture fisheries insurance, aquaculture insurance, and salt production insurance, protecting fishermen, fish farmers, and salt farmers against the risks they face in fishing, fish farming, and salt production activities. These risks include the loss or damage of fishing, aquaculture, and salt production facilities; occupational accidents or loss of life; and other types of risks stipulated by ministerial regulation. The causes of such risks include natural disasters, fish disease outbreaks, the impacts of climate change, and/or pollution. Protection against risks to fishing and fish farming facilities, as well as other types of risks, is provided in the form of fisheries insurance.

The insurer may take into account the potential risks and the estimated amount of losses that may be incurred. If the insurer is unable to make such estimations, the government—represented in this case by the local Marine and Fisheries Office—should assist in providing an overview of the potential losses that may arise, and may even directly incorporate such provisions into regulations. In this way, not only the interest of the insured in receiving compensation is protected, but also the interest of the insurer in obtaining the premium payments. If the insurance is in the form of a full or partial subsidy, the government, through the Marine and Fisheries Office, which is aware of the impact of events on the insured object, should provide an adequate subsidy amount at the time of premium payment so that the insurance company does not suffer losses and the principle of indemnity can be properly implemented.

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