

Insurance Policy Closure As The Implication of The Utmost Good Faith Principle in Life Insurance Claim Filing

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Abstract

The risk transfer mechanism from the insured to the insurer in insurance happens when both parties have fulfilled what has been agreed in insurance agreement along with obligatory insurance principle like the utmost good faith principle and the regulation regarding the insurance procedure. In the South Jakarta District Court Decision number: 16/Pdt.G/2016/PN.Jkt.Sel, Panel of Judges excluded what has been agreed by both parties on the basis of fulfillment of utmost good faith principle by the plaintiff. The excluded matter was regarding the written notification obligation that has been agreed by both parties, but the plaintiff did not notify it in writing but orally instead. Law No. 40 of 2014 does not clearly regulate claim notification, thus causing difficulty in determining whether certain notification is the application of the utmost good faith principle or not. Some foreign legislations regulate that matter, so they can become a reference for Indonesian regulators in perfecting the existing regulation.

Keywords: insurance; the principle of utmost good faith; insurance policy closure; insurance claim; life insurance.

Abstrak

Mekanisme transfer risiko dari tertanggung ke penanggung dalam asuransi terjadi apabila tertanggung dan penanggung memenuhi apa yang diperjanjikan dalam perjanjian asuransi beserta prinsip wajib asuransi seperti prinsip utmost good faith dan regulasi mengenai prosedur asuransi itu sendiri. Dalam Putusan Pengadilan Negeri Jakarta Selatan Nomor 16/Pdt.G/2016/PN.Jkt.Sel, Majelis Hakim mengecualikan apa yang telah disepakati para pihak atas dasar telah dipenuhinya prinsip utmost good faith oleh penggugat. Hal yang dikecualikan tersebut adalah mengenai kewajiban pemberitahuan tertulis yang telah diperjanjikan para pihak, namun penggugat tidak melakukannya secara tertulis, melainkan secara lisan. Undang-Undang Nomor 40 Tahun 2014 serta Peraturan Otoritas Jasa Keuangan Nomor 69/POJK.05/2016 tidak mengatur secara jelas mengenai pemberitahuan klaim, baik secara lisan maupun tulisan, sehingga menimbulkan kesulitan dalam menentukan apakah pemberitahuan tersebut merupakan penerapan prinsip utmost good faith atau tidak. Beberapa peraturan perundang-undangan di luar negeri ada mengatur hal tersebut, sehingga dapat menjadi referensi bagi regulator di Indonesia dalam menyempurnakan regulasi yang ada.

Kata kunci: asuransi; prinsip utmost good faith; penutupan polis asuransi; klaim asuransi; asuransi jiwa.

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Introduction

Insurance, or what is commonly referred to as “coverage”, is an agreement (Setiawati, 2018), in which the insurer and the insured bind themselves to an insurance agreement. The insurer is the party undertaking to pay for any risk or loss suffered by the insured and plays a role in providing services of an insurance company (Abdulah, 1993).

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The insurer earns the premium from the insured. Therefore, the insurer must compensate the insured for a loss, damage, or loss of profit, which he may suffer due to an unexpected event (Sunarmi, 2014). Basically, risks can arise in human life in simple to complex forms, in industrial activities, trading activities, and many others (Hartono, 1995). Thus, anyone who wants to bind himself to an insurance agreement must have an insurable interest (Yulia, 2016) for every possible risk should be prevented, avoided, detained, and transferred to another party through an insurance agreement (Tarsisi, 1990).

The social function of insurance is to help a person carry out his business with prudence and to give him the option to transfer the risk of loss from an unexpected event by paying a certain amount of premium to the insurance company. In other words, insurance is meant to be a risk transfer mechanism that gives policyholders a feeling of security. Thus, on behalf of justice, a good legal system must protect legitimate policyholders (Li, 2016). It can also be said that insurance is a concept that was born from the human need to obtain a sense of security and protection (Hartono, 2001).

The protection of the policyholder is closely related to the insurance policy, the document of agreement between the insured and the insurer, which is the insurance company. This document can be printed on a piece of paper (Ichsan, 2013) and contains a simple, concise agreement. However, sometimes, an insurance policy can also be a long and detailed document. The detailed document also contains property insurance agreements with various interests related to various disaster risks, both speculative and pure risks (Salim, 2005). These interests are basically not limited to the insured, but also the interests of a third party called the beneficiary (Sabrie, 2011). Whatever the form of the insurance policy, the agreement document contains rights and obligations of the parties bound by the contract.

An insurance policy is also a form of a standard clause, a provision that has been prepared and determined in advance unilaterally by the insurance company or insurer, which is set forth in an agreement document that is binding and must be fulfilled by the insured as a consumer. The contents of the contract are fully determined by the insurer/insurance company as the business actor, while the consumer only has two choices: agree or disagree. The agreement set forth in the form of a policy is an agreement that is binding on the parties who signed it (Miru, 2004).

Some insurance policies have their own terms. This is often referred to as policy standardization, which is based on three different methods: custom, law, and agreement between companies. The standardization of these policies is not the same as one another. For example, a large company wants to buy insurance but doesn't want to buy a standard policy. The company makes its own form which contains its interests, and also uses the policies made by the majority of insurance companies as a consideration (Ali, 2002). Standardization according to the law must still be implemented. As a consequence, the contents of the insurance policy must not violate the laws and regulations of a country. Therefore, the insurance policy can be used as a legal basis for the parties who bind themselves to the insurance policy. The main objective is to produce legal certainty, both

for the insured and the insurer, in carrying out all insurance activities, including insurance closure that ends the policy for the parties.

A decision from the South Jakarta District Court Number 16/Pdt.G/2016/PN.Jkt.Sel regarding a dispute over insurance was issued. In the decision, Agung Prawira and Dwinaty Indah – hereinafter referred to as Plaintiff – filed a lawsuit against PT. Cigna Insurance – hereinafter referred to as Defendant. Plaintiff filed a default suit against Defendant because, in the Plaintiff's view, Defendant did not fulfill his obligation to provide compensation for his father's death due to an accident, of Rp. 400,000,000, - (four hundred million rupiah). Plaintiff is the heir of the late Ucup Supena, Plaintiff's father. Defendant made a defense in response to Plaintiff's claim. According to Defendant, in Article 12 number 1 point (a) of the Pro Maxima Policy owned by Plaintiff's father, the procedure for filing a claim was clearly written. It stated that Plaintiff must submit a written notification to Defendant's claim department, no later than 30 (thirty) calendar days after the death of Plaintiff's father. However, Plaintiff only completed all the required documents for filing a claim on July 23, 2013 and on August 13, 2013. If the Ucup Supena died on May 3, 2013, then that date has passed the deadline stated in the insurance policy. The Plaintiffs added that they had already sent notice of Defendant's father's death, either by coming directly to the company or by contacting Defendant's office by telephone. Regarding this matter, the Panel of Judges decided to partially grant Plaintiff's claim. In the legal considerations of the Panel of Judges, the action of the Plaintiff to complete several prerequisite documents for filing a claim—not being submitted to the Defendant—was considered a communication between the Plaintiff and the Defendant, so that the Plaintiff was aware of the documents as a requirement for filing a claim. This was interpreted by the Panel of Judges as a notification by Plaintiff to Defendant. This was closely related to the legal fact which states that the Plaintiff had given notice of his father's death to Defendant, either by coming in person or by contacting Defendant's office via telephone. However, this was not accompanied by strong evidence.

The legal considerations of the Panel of Judges, along with the legal facts mentioned in the decision, led to the conclusion that the notification action taken by Plaintiff was the implementation of utmost good faith principle. In the insurance agreement, the utmost good faith principle is important because it affects how a policy can be approved and then used when filing an insurance claim. If there were a problem in the process of making the insurance agreement because there are parties who did not carried out the utmost good faith principle, the filing of a claim would also experience problems. The process of making an insurance agreement, which is printed in the form of a policy, will have a lot of influence on how the policy is implemented, especially at the stage of filing a claim. Therefore, of many problems, the problems that often arise in this stage may occur due to a violation of the utmost good faith principle. The principle is one of the requirements of many conditions applied, not only to specific agreements such as insurance agreements but also to all agreements in general. In Indonesia, the utmost good faith principle has been stated in laws and regulations.

In laws and regulations, such as in Book Three of the Civil Code (KUHPer), there are four very important universal principles: the principle of freedom of contract, the principle of *pacta sunt servanda*, the principle of utmost good faith, and the principle of consensualism. In the insurance agreement, the principle of utmost good faith must appear in an underwriting process or before there is an agreement. The principle of utmost good faith is specifically required in the insurance agreement.

Since the utmost good faith principle is one of the specific requirements in the insurance agreement, it is very important to review and analyze the decision of the case to ensure that Plaintiff have implemented it. In addition, it is necessary to review whether the Plaintiff's verbal notification—without any evidence of the notification—really implemented the principle of utmost good faith, because on the other hand, what is agreed upon in the insurance agreement is a written notification. This raises questions about the strength of the agreement by the parties. By reviewing all of these matters, it can be seen whether the policy closure related to the life insurance claim case by Plaintiff has implemented the principle of utmost good faith.

Research Problems

Based on the background that has been described previously, the following are the problems to be discussed. In the Decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN. Jkt. Sel., it was written that one of the reasons the Panel of Judges granted part of the lawsuit was because they considered Plaintiff carry out the utmost good faith principle, regardless of what was stated regarding “written notification” in a quo decision. Therefore, the first research problem to be discussed is the exception of written agreements, in connection with the implementation of the utmost good faith principle.

To obtain a comprehensive research result, on the second research problem, the South Jakarta District Court Decision Number 16/Pdt.G/2016/PN. Jkt. Sel is analyzed in relation to the policy closure procedure in Indonesia and the application of the utmost good faith principle in a life insurance claim.

Research Methods

This research is normative juridical research. Basically, normative juridical research uses and applies legal norms, both written legal norms and information that can be obtained through interviews with source persons or informants (Ibrahim, 2006). This research also used references in the form of written legal norms, such as the Civil Code (KUHPer), the Commercial Code (KUHD), and many other laws and regulations to obtain qualified research results. Secondary data was also used in this research; for example, books, journals, legal dictionaries, positive law, and written norms (Mamudji, 2005). Thus, it can be said that this research is a form of juridical-normative research.

Furthermore, this research has a prescriptive descriptive nature. It was preceded by an explanation of the existing events to obtain a complete picture or description of a legal

situation in a certain place or a juridical phenomenon that occurred or a certain legal event that was happening in people's lives. This research aimed to provide an overview and formulation of problems based on factual conditions or the reality that occurred related to the topic discussed, which was the closure of the policy in Indonesia in relation to the implementation of the utmost good faith principle, in the Decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN.Jkt.Sel.

Secondary data was processed to obtain objective research results on each of the problems discussed. Secondary data was data obtained from library materials that were not obtained directly from the community. Secondary data can be obtained through the researchers' efforts to read laws and regulations, books, journals—both domestic journals and international journals—, articles, or other materials related to this research (Soekanto, 2006), and to be used in the research.

This research used a literature study as a data collection tool. By using library research, researchers also collected various sources of knowledge that were the basis for research problems discussion. This basic knowledge includes the procedure for a life insurance policy closure, the application of the utmost good faith principle, and many other things that become variables in this research. All were used to analyze the judges' considerations in the relevant decision. Then, data analysis was divided into 2 (two) types: qualitative data analysis and quantitative data analysis. The data analysis applied in this study was qualitative data analysis because this study analyzed the policy closure procedures in Indonesia, with its relation to the implementation of the utmost good faith principle, in the South Jakarta District Court Decision Number 16/Pdt.G/2016/PN. Jkt. Sel.

Discussion

The Utmost Good Faith Principle in Insurance

“Uberrimae fidei” or what is commonly referred to as “the utmost good faith principle” describes two interrelated concepts between the non-disclosure concept and the misrepresentation concept, which in practice are quite complicated. The non-disclosure concept which can be referred to as a concealment act implies a negative behavior and has been defined as a failure or refusal to disclose something that may or needs to be disclosed. Legally, this is also defined as the concealment of facts. Thus, there is an obligation to disclose material facts. Generally, confidentiality arises from the intentional or unintentional failure by one party to communicate facts to the other party or when it is not known or assumed to be known by the second party. It is concealment of facts when facts are disclosed to persuade a second party not to enter into a contract at all or to set better terms. On the other hand, a misrepresentation can also be in the form of fraudulent or negligent acts, inaccurate or untrue written or oral statements, made before or at the time the contract is concluded by the contracting party or by its agent, is material to a risk assessment by the insurer. or for the benefit intended by the insured, and persuade the aggrieved party to enter into a contract (Anifalaje, 2019).

In a nutshell, the utmost good faith principle is a principle that obliges each party to disclose all material facts and facts suspected of influencing the stage of insurance coverage of an object (duty of disclosure). Of course, this principle also prohibits the parties from making a false and/or untrue statement (misrepresentation) in the insurance agreement. If there are obligations and prohibitions that are violated, the insurance policy can be canceled, even if the prospective insured shows the utmost good faith during the contract process (Simanjuntak, 2011). There should be no concealment of facts. There are two measures that can be used to determine whether the insured's actions can be classified as concealment of facts. The first is the subjective measure of the insured. The insured can be said to have concealed facts if he knows about it but does not inform the insurer. The second measure is an objective measure. If what is not notified is something that should have been known by the insurer himself, the insurance agreement is not canceled. This measure is not used for material facts (Prodjodikoro, 1996). In short, the utmost good faith principle requires the insured in the insurance policy to provide accurate and clear information regarding all facts that are considered important and related to the object being insured (Ali, 2003).

In the utmost good faith principle, not only the insured has obligations. The insurer, which is the insurance company, also has an obligation to explain both the risks that are guaranteed and those that are excluded. In summary, all terms and conditions of coverage must be explained carefully and in detail. The utmost good faith principle, or the principle of having a good will, is basically a principle that is applied in every agreement as regulated in Article 1338 paragraph (3) of the Civil Code which states that a contract or agreement must be carried out in good faith. It means that if the principle is not carried out at the closing stage of an agreement, including in the insurance policy closure, it will result in a defect of will.

From this article, it can be said that in general, the utmost good faith principle is based on law because it is regulated in the Civil Code (KUHPer). In Article 251 of the Commercial Code (KUHD), this principle is again emphasized as a very important principle, considering that insurance law—and its principles—have been known and regulated for a long time. This principle was carried out before the existence of the Republic of Indonesia, it was also regulated in the KUHD which was one of the legacies of the Dutch colonial rulers (Husain, 2014). In that article, it is emphasized that any false or incorrect information from the insurer, or every time he does not disclose things that are known to the insured even though he has good faith, if the insurer has known the real situation, the agreement will not be closed or not closed on the same terms and result in the cancellation of the coverage.

From the rules mentioned earlier, there are three things that need to be considered. First, the emphasis is on the actions of the insured who provides false information to the insurance company as the insurer. Second, the emphasis is on the actions of the insured who provide incorrect information to the insurer. Finally, the emphasis is on the actions of the insured who do not provide information about things that he knows. Thus, the

utmost good faith principle is very important in an insurance policy because it will affect how a policy can be approved and how the policy is finally used in an insurance claim filing.

One of the examples of the utmost good faith principle is the payment of the insured's premium. Insurance events are legal actions in the form of agreement or mutual consent between the insurer and the insured regarding an insurance object, unexpected events that threaten the insured object, and insurance requirements. The agreement or mutual consent is made in the form of a deed which is often referred to as a policy. The object of insurance can be in the form of movable or immovable goods, rights, or interests attached to an object or a number of costs called "premium" or compensation. There are goals to be achieved by the parties in the insurance object. The insurer aims to obtain premium payments for benefits, which is the transfer of risk. Meanwhile, the insured has a goal to be free from the agreed risk and get compensation if there is a loss of property. Basically, the insurance agreement is a compensation agreement, in which the insurer binds himself to make compensation because the insured party suffers a loss, and what is replaced is something that is balanced with the actual loss suffered—called the principle of indemnity. The relationship between the insurer and the insured in insurance is the attachment due to an agreement. This attachment is in the form of the willingness of the insurer and the insured to obtain their respective obligations and rights. When both parties fulfill their obligations to each other, that is an example of the implementation of the utmost good faith principle. There are many other examples of this principle implemented during insurance activities.

In contrary with the principle of utmost good faith, there is the term "bad faith" which is mentioned in Article 531 of the Criminal Code. In the article, it is explained that the property holder is said to have good faith if he obtains the property by owning the property rights and is not aware of the defects contained therein. A person is said to have bad faith in his possession if he knows for sure that he is not the owner of the object. Therefore, according to the Civil Code, it must first be ascertained and proven whether the person knows that he is not the owner of the object, in order to find out the bad intentions of a person. According to Wirjono Prodjodikoro and Subekti, good faith (*te goeder trouw*), which is often interpreted as honesty, is divided into two types: good faith when entering into a legal or contractual relationship and good faith when exercising the rights and obligations arising from legal relations (Syahrani, 2000). There is also a rule that states that whoever makes an accusation related to bad faith, it is he who must also prove it. The proof is not reversed. So, the responsibility for proving bad faith rests with Plaintiff as the party making the accusation or lawsuit. It should also be noted that the evidence contained in civil procedural law has the aim of finding and realizing a formal truth, where the judge is passive and there is no demand for confidence in himself to decide cases. This is the difference between civil procedural law and criminal procedural law. As a result, the truth sought in civil procedural law depends on what is stated by the parties. Thus, the

plaintiff also has an obligation to prove the bad faith of the defendant because the judge will not go further and decide beyond what was stated by the parties (Harahap, 2008).

Utmost Good Faith Principle and Good Faith in General Terms

The good faith principle is mentioned in various articles in the Criminal Code and the Criminal Code, such as Articles 1320, 1321, 1323, 1328, and 1338 of the Criminal Code and Article 251 of the Criminal Code. The implementation of the principle of good faith is not only at the time of the agreement but also when a contract is made and signed. Regarding insurance policies, this principle is said to be implemented when the insured party does not abuse the trust of the insurer, which is the insurance company. On the other hand, the insurer must also have good faith by giving an explanation about the extent of the guarantee provided and the rights of the insured (Purba, 1995).

The good faith principle is also stated in Article 250 of the KUHD which explains that the insured must have an interest in entering into an insurance agreement. Article 276 of the KUHD also explains the good faith principle, stating that the insurer is not required to provide perfect compensation if the activity occurs as a result of the intentional act of the insured. Besides in this article, this principle is also implied in Article 281 and Article 282 of the KUHD, where there is a regulation that confirms that restorno premium is only carried out if the insured has good faith (Sastrawidjaja, 2003).

Article 251 of the KUHD is also related to Articles 1321 and 1322 of the Civil Code. This special provision states that what is regulated in Article 251 of the KUHD is not based on a consideration that the insured's actions were carried out intentionally or unintentionally. Generally, the insurer who knows the actual condition of the object of insurance will not provide insurance on dishonest terms (Muhammad, 2006). The existence of Article 251 of the KUHD will protect insurance companies that act as insurers so that they can be free from unfair risks when the risks are transferred to them (Pangaribuan, 1982).

Considering all these arrangements, it can be clarified that the provision of information must be based on the good faith of each party. In relation to the concept of good faith in a contract or legal relationship, in insurance policies, not only good faith is required in the concept of a contract in general, but also the utmost good faith principle implementation, which emphasizes the provision of information and things that are already known related to the insured object.

Insurance Policy Closure According to Insurance Agreement and Legislation

The insurance policy closure or insurance agreement occurs when there is a written statement from the insurance company as the insurer to bear all the agreed risks, with the payment of premium by the insured. If both of these happen then the insurance agreement is effectively in effect. The relationship between the premium payment and the insurer's statement to bear the risk is related to the concept that when the insurance agreement has

occurred, the insurer is obliged to bear the risk even though the policy has not yet been issued. The policy issued must also be signed by the insurer because he is the one who made it, while the insured is not required to sign it. Therefore, premium payments are a form of agreement that the insured gives to bind all things regulated in the policy (Simanjuntak, 2011). Simply put, if the insured does not fulfill his obligation to pay the premium, he does not get his rights from the insurer. That's where the agreement ends. The policy is no longer applicable. The following are things that can terminate an insurance agreement:

1. Term of Contract Expired

In making an agreement, there is the freedom of contract principle. The parties are given the freedom to determine matters regarding the validity period of the agreement. This is based on rational thought that they can benefit economically from the contract they agreed to within the period of time they want. This is also regulated in Article 1646 paragraph (1) of the Criminal Code which confirms that a partnership ends is when it passes a fixed period of time.

2. Parties Involved in the Contract Died

If one of the parties or both parties who are the subject of the agreement dies, then an agreement can end. Article 1646 paragraph (4) of the Criminal Code also stipulates that the agreement ends when one of the partners dies or is declared a person under guardianship. Being declared bankrupt is also a condition that can result in the termination of the agreement.

3. The Parties Declared Termination of the Contract

If one or both parties who make the contract a legal subject declare to terminate the contract, then the contract can end even though the period specified in the agreement has not ended. This is also regulated in Article 1603 letter n of the Criminal Code. In the article, it is explained that each party to the agreement can terminate the relationship, even without notification, or without heeding the applicable regulations regarding termination notice. Of course, this only happens if there is an urgent reason that is suddenly informed to the opponent.

4. The Contract Performance Had Been Made

The ending or the termination of a contract can occur if the parties bound in the contract have completed their responsibilities in carrying out the agreement made by all parties. Simply put, the parties bound in the agreement have made the performance that is in the interest of all parties. The performance is an obligation that must be carried out, the object of the engagement of a contract. In the agreement, the obligation is a burden borne by the parties and is contractual in nature. Article 1382 of the Criminal Code stipulates that when the parties or one of the parties obliged to make the performance—in this case, the agreement made voluntarily—have done it accordingly, the agreement can be ended or terminated.

5. The Judge Decided the Contract Cancellation

The judge's decision has a legal force that can therefore decide the expiration or cancellation of a contract. If one of the parties submits a lawsuit for the cancellation to the other party in the contract due to problems related to the subjective conditions of the validity of the contract as regulated in Article 1320 paragraphs (1) and (2) of the Criminal Code, resulting in a defect of will (*wilsgbreke*); or due to incompetence (*onbekwaamheid*); and if a party to the contract is under the guardianship or is declared bankrupt as stipulated in Article 1646 of the Criminal Code, the contract can be canceled.

The Principle of Utmost Good Faith as a Universal Principle

An insurance or coverage agreement is a special and unique contract. It has certain characteristics that are very strict when compared to other types of contracts. Basically, the insurance agreement must meet the general terms of the agreement. In addition, the insurance agreement must not contradict certain principles which in the end contrast the nature and special characteristics of the insurance agreement itself (Hartono, 1995).

Based on the Commercial Code, the general arrangement of agreements in the Criminal Code also applies to insurance agreements as special agreements. Therefore, the parties are required to comply with several provisions in the Criminal Code, one of which is the values contained in contract law. The following values are derived from the provisions of the Criminal Code (Yikwa, 2015):

1. Consensual value
2. Freedom of contract value
3. Binding condition value
4. Trust value
5. Legal equality value
6. Prorated balance value
7. Legal certainty value
8. Good faith value

As previously explained, an insurance agreement is a special agreement regulated in the KUHD. Therefore, it is not only the general values of agreement law that must be included in the insurance agreement but there must also be the principles of the insurance agreement applied to it. The principles include the following (Rastuti, 2011).

1. Insurable Interest principle
2. Utmost Good faith principle
3. Idemniteit Principle
4. Subrogation Principle
5. Causaliteit Principle
6. Contribution Principle
7. Cause Principle
8. Follow of fortune principle in reinsurance

The Implementation of the Utmost Good Faith Principles as an Exception to Written Agreement

What is required in the insurance agreement is not just good faith, but the principle of utmost good faith which has a wider scope. This means that it is not only ownership knowledge that must be focused on, such as the principle of good faith in civil law in general, but also the honesty of the information provided between the insured and the insurer regarding all matters relating to the object insured. Because the decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN.Jkt. Sel concerns life insurance, the object is the life of the policy holder (Ilyas, 2014), Ucup Supena. All actions and information regarding this matter have their own legal implications for all parties bound in the insurance agreement. This is in line with the basic function of life insurance which provides compensation through premium payments as the cost of coverage to parties who suffer losses due to the death or life of the insured party (Cennery, 2018).

From the description of the principles above, the decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN.Jkt.Sel, also needed to explore further the very fundamental issues related to the principle of legal certainty that must be fulfilled in every case decision made by judges, considering the principle of “judge made law”. Judges’ decision will be jurisprudence that is inseparable from the development of existing laws in Indonesia, especially the judiciary in Indonesia. Therefore, jurisprudence in Indonesia has a very large and important role. First, it acts as a source of law. Second, as a judicial product, jurisprudence becomes a “guideline” for judges in deciding cases (Puslitbang Hukum dan Peradilan Badan Litbang Diklat Kumdil MA RI, 2010). Where there is a role, there will also be a function. Jurisprudence has the function to fill the legal vacuum. Therefore, judges are prohibited from rejecting cases they receive due to the absence of governing law. This is where “judge made law” has a major impact in forming a guideline for the creation of a comprehensive and standardized legal codification (Mertokusumo, 2003).

Because the principle of legal certainty is so important that efforts must be made for its existence, it is necessary to further study the principle of utmost good faith and its relationship to the strength of the insurance agreement as to the law that applies to the insured and the insurer as the parties bound to it. In the previous section, it has been explained that it is not acceptable if the Panel of Judges believed there had been a confirmation given by Plaintiff to Defendant regarding the death of Ucup Supena, only because Plaintiff had provided several documents. Apart from this, it was necessary to see whether it was true that Plaintiff had communicated with Defendant via telephone and/or face to face, without any evidence in the form of a written notification receipt to Defendant. In this condition, three important things happened. First, Plaintiff had informed Defendant that Ucup Supena had died. Second, the notification was not accompanied by any evidence. Third, in Article 12, point 1 letter a of the Pro Maxima Policy belonging to the Plaintiff’s late father, the claim submission procedure clearly stated that the Plaintiff must submit a written notification to the Defendant’s claim section no later

than 30 calendar days after the death of the Plaintiff's father. Based on the insurance agreement that has been agreed by both parties, the notification made by Plaintiff was not valid due to the absence of evidence that Plaintiff had given written notification to Defendant, despite the fact that Plaintiff had confirmed it to Defendant. It can be said that the discrepancy showed that Plaintiff's actions did not reflect the principle of utmost good faith. The plaintiff's argument regarding the obligation of notification was unacceptable.

It would be different if the insurance agreement agreed upon by both parties contained elements that were not in line with Indonesian law or violated the applicable laws and regulations. In other words, there were other conditions that could occur in which the agreement violated the utmost good faith principle. Under these conditions, it can be said with certainty that the agreement is void as a consequence of the violation of the utmost good faith principle. Considering that the principle of utmost good faith is a universal principle in the insurance sector and must be included in an insurance agreement, the strength of the principle of utmost good faith is enormous. Without the principle of utmost good faith in an insurance agreement, the insurance agreement does not meet the legal requirements. It is not legally valid because it deviates from the fundamental principles of an insurance agreement. This condition does not describe legal uncertainty but shows the strength of the utmost good faith principle as an additional prerequisite in insurance agreements as a special agreement that is different from civil agreements in general. Therefore, the claim made by the heirs of Ucup Supena could be accepted by PT. Cigna Insurance as an insurance company that bears the risk of the late Ucup Supena.

On this point, it can be seen that the existence of the utmost good faith principle as an additional prerequisite in the insurance agreement is very important. Without this principle, the insurance agreement is not valid. On the other hand, with the principle of utmost good faith as a prerequisite for an insurance agreement, this principle has a great legal impact. The submission of a life insurance claim based on the principle of utmost good faith must be accepted by the insurance company. This is where the policy closure and claim disbursement can take place. This is in line with the opinion conveyed by Gunarto that an insurance agreement is an agreement that must be subject to the necessity of having the best possible faith in the parties bound to the insurance agreement (Gunarto, 1984).

Notification Deadline of Life Insurance Claim Filing and Its Relation to the Implementation of the Utmost Good Faith Principle

Regarding the deadline, the Indonesian Life Insurance Association (AAJI) explained that, in general, the standard period for filing a claim in Indonesia is 30 (thirty) days to 60 (sixty) days. However, AAJI also emphasized that the time period depends on the arrangement stated in the policy that has been mutually agreed upon between the insured and the insurer—it could be longer or shorter (Indonesian Life Insurance Association, 2022). Deadlines are very important. Deadlines that are too short make very little sense on

life insurance claims. The heirs or parties entitled to make claims are in mourning which affects their mental condition. They will not think about other complex matters, such as submitting a death benefits claim, from the life insurance of the policyholder who has just died. However, in the decision of the South Jakarta District Court Number 16/Pdt. G/2016/PN. Jkt. Sel, it was stated that Plaintiff had only completed all the required documents for filing a claim more than two months after the death of the policyholder, Ucup Supena. There is also no evidence of notification made by Plaintiff to Defendant. Regarding deadlines, there are regulations in other countries that can be used as references or inputs to improve existing regulations in Indonesia. In Standard Provision No. 6 regarding the Notice of Claim in Title 48 (Insurance) Chapter 48.20.082 Revised Code of Washington (RCW), it is explained that a written notice of claim must be given to the insurance company within twenty days after the occurrence or commencement of the loss covered by the policy, or immediately thereafter if possible. It means that there is an emphasis on considering the circumstances of the claimant regarding notification deadlines which are the responsibility of the claimant. This emphasis also occurs in England. The following rules are stated in Standard Provision No. 6. Title 48 (Insurance) Chapter 48.20.082 Revised Code of Washington (RCW).

There shall be a provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer. (In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: "Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he or she shall at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.")

In the arrangement, it is explained that there are provisions regarding notification of claims. It is explained in the arrangement that written notification of claim must be given to the insurance company within twenty days after the occurrence or commencement of the loss covered by the policy, or immediately thereafter if possible. Notices given by or on behalf of the insured or his heirs to the insurer or to an authorized agent of the insurance company, with sufficient information to identify the insured, will be considered as notification to the insurance company. Under these conditions, it is possible for such notification to be made as soon as possible. Thus, insurance and

reinsurance contracts usually include a notification clause requiring the insured to give notice to the insurer of the claim or loss, or the circumstances that gave rise to the claim or loss, in a certain way (usually in writing) and within a certain time period—for example, “as reasonably possible”. The insured may lose the right to compensation due to failure to comply with the notice clause (Scoville, 2022).

Judge’s Consideration in the Decision of the South Jakarta District Court Number 16/Pdt. G/2016/Pn.Jkt.Sel Regarding Policy Closure and the Implementation of the Utmost Good Faith Principle in Life Insurance Claims Filing

Regarding the decision of the South Jakarta District Court Number 16/Pdt. G/2016/PN. Jkt. Sel, it is necessary to understand in advance that in Article 53 of Law Number 48 of 2009 concerning Judicial Power, the judge has the authority to examine and decide cases. So, any existing stipulations and decisions are the responsibility of the judge who made them. All stipulations and decisions must contain the judge's legal considerations based on an appropriate legal basis, appropriate legal theory, and valid legal facts.

Therefore, before observing the judge's considerations, it is necessary to pay attention to the legal facts which are one of the things that influence the judge’s consideration in deciding cases. In the description of the legal facts in the a quo decision, it is written that, according to Plaintiff, he has contacted Defendant face-to-face and via telephone, giving information about the death of his father, in order to file a claim for death compensation costs. This is the right of Plaintiff as the heir, given the principle of insurable interest, regarding involvement as a result of the death (Wulansari, 2017) of Plaintiff’s father. According to the Plaintiff, this action is a manifestation of the principle of Utmost Good Faith. The Plaintiff’s argument was indirectly approved by the Panel of Judges. This can be seen in the legal considerations in the decision, where the Panel of Judges is of the opinion that the Plaintiff has confirmed the death of his father, Ucup Supena. The Panel of Judges held this opinion because they saw several documents that had been prepared by the Plaintiff before the deadline for submitting a claim—30 (thirty days) after the date of Ucup Supena's death, which was May 3, 2013. According to the Panel of Judges, these documents indicated a confirmation between Plaintiffs and Defendants, so that the Plaintiffs can know these prerequisites. This is something that needs to be explored further.

First, one thing is for certain, what is emphasized in the utmost good faith principle is the responsibility of the insured, to be honest in informing all matters related to the object being insured to the insurer as the party who will bear all the risks that have been agreed in the policy. That is why one of the arguments in a quo decision is whether or not the Insured’s heirs—who are candidates for death compensation—have informed the Insurer about the death of the Insured, within a certain period of time that has been agreed upon in the insurance agreement. Unfortunately, notification of the death of the policy

owner to the insurer is not clearly regulated in Indonesian laws and regulations. This also raises a debate about whether the plaintiff's act of collecting several documents through the insurance company's website—without communication between the insurance company and the plaintiff—can be called the implementation of the utmost good faith principle. It is difficult to answer if there are no legal provisions that clearly regulate the obligation of the notification. In fact, the regulator must take this matter seriously because it affects the legal certainty of the public. In fact, there is no clear regulation regarding notification in this claim procedure, both in Law Number 40 of 2014 concerning Insurance, even in the Financial Services Authority Regulation (POJK) which should accommodate it, given that the Financial Services Authority (OJK) was formed to organize an integrated system of regulation and supervision of all activities in the financial services sector, including insurance, so as to produce an integrated system that is effective, efficient, and optimal (Sitompul, 2012). Thus, in this case, the real issue is not the Plaintiff's ignorance of the claim procedure which often occurs in insurance cases, but there is a weakness in Indonesian law.

Second, according to the Panel of Judges in their legal considerations, there has been confirmation given by Plaintiff to Defendant regarding the death of Ucup Supena. Plaintiffs even know and have some of the prerequisites needed in filing a claim. Herein lies another problem. The judge's considerations can still be questioned, considering that the prerequisite documents can be found easily because the information is listed on the insurance company. In addition, the documents are general documents that are usually requested by insurance companies when the Insured wants to file a claim. Thus, even with some of these documents, the veracity of Defendant's notification to Plaintiff, either face-to-face or via telephone, was still in doubt.

Third, in the legal considerations of the Panel of Judges, it was written that only a few prerequisite documents for filing a claim have been provided. This means that there was no complete document that fulfilled all the prerequisites for the requested claim filing document. Although it was not the main focus of the issues being discussed, this should be a consideration for the Panel of Judges in deciding the case.

Fourth, regarding the deadline that has been described in the previous section, in the decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN. Jkt. Sel, Plaintiff has only completed all the required documents for filing a claim after more than two months since the death of the policyholder, Ucup Supena. There was also no evidence of notification made by Plaintiff to Defendant. In relation to the deadline, the Standard Provision No. 6 regarding the Notice of Claim in Title 48 (Insurance) Chapter 48.20.082 Revised Code of Washington (RCW), it is explained that a written notice of claim must be given to the insurance company within twenty days after the occurrence or commencement of the loss covered by the policy, or immediately thereafter if possible. There is an emphasis on considering the circumstances of the claimant in discussing notification deadlines which are the responsibility of the claimant. This is also the case in England. Insurance and reinsurance contracts usually include a notice clause requiring the

insured to give notice to the insurer of the claim or loss, or the circumstances giving rise to the claim or loss, in a specified manner (usually in writing) and within a specified period of time—for example, “as soon as reasonably possible”. The Insured may lose the right to compensation due to failure to comply with the notification clause (Scoville, 2022). From the four explanations, in the consideration of the Panel of Judges, it cannot be said that there has been confirmation given by Plaintiff to Defendant regarding the death of Ucup Supena, only because there were several documents provided by the Plaintiff. Thus, the legal facts argued by Plaintiff regarding the act of notifying Ucup Supena’s death cannot be said as the implementation of the utmost good faith principle.

Conclusion

Based on the decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN. Jkt. Sel, two important conclusions can be drawn. *First*, the author does not agree with several parts of the legal considerations of the Panel of Judges which interpreted the existence of several claim prerequisite documents owned by Plaintiff as evidence of confirmation by Plaintiff to Defendant regarding the death of the late Ucup Supena. These documents were not complete, and everyone could access them through the website of PT. Cigna Insurance. Therefore, it could not be ascertained that there had been communication between Plaintiff and Defendant or that there had been a notification of death given by Plaintiff to Defendant. Thus, it was not an implementation of the utmost good faith principle. This principle actually emphasizes the responsibility of the Insured to be honest in informing all matters relating to the object being insured to the Insurer as the party who will bear all the risks that have been agreed in the policy. *Second*, it can be concluded that as a condition of the insurance agreement, the principle of utmost good faith has an important role. Therefore, if the principle is not fulfilled in an insurance agreement, the agreement has an exception. This also applies to insurance coverage. This cannot be interpreted as legal uncertainty but is interpreted as the role of the utmost good faith principle as a special condition of an insurance agreement.

Therefore, the role of the utmost good faith principle is urgent. This principle will encourage the parties to an insurance agreement to carry out the insurance agreement as civilized people (Sutiyoso, 2013). No wonder it is included as a condition of the insurance agreement. Therefore, the exception in the insurance agreement with the principle of utmost good faith does not weaken legal certainty. On the other hand, this will protect the parties from any form of fraud that could harm one of the parties to the insurance agreement. Thus, it would be better if this principle were studied more deeply by academics and practitioners in Indonesia, so that they could perfect every legal consideration and decision of the Panel of Judges in existing legal practice.

Suggestion

Based on each problem and the previous discussion, there are several suggestions from the author, as follows. *First*, for regulators in Indonesia who are responsible for each regulation, it is better to revise every legislation that requires improvement and refinement. Related to this research, for example, the procedure for verbal notification at the initial stage of filing a life insurance claim is still not clearly regulated in the laws and regulations in Indonesia. If not handled, it can trigger disputes or problems, similar to what happened in the decision of the South Jakarta District Court Number 16/Pdt.G/2016/PN.Jkt.Sel. *Second*, legal practitioners such as judges, prosecutors, etc., should conduct socialization or special training regarding the latest developments in legal science. For example, the development of the utmost good faith principle is still being studied by many researchers in the world as a universal principle in insurance law.

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