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Application Of The Principle Of Freedom Of Contract In Insurance Law Protection For Policy Holders

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Abstract

In the insurance industry in Indonesia, claim settlement is an important process that influences policyholders' trust in insurance companies. The principle of freedom of contract is the basis for the existence of standard agreements that regulate the legal relationship between insurers and consumers in insurance companies. However, the application of this principle requires that the parties entering into an agreement have an equal position so that the rights, obligations and provisions in the agreement take into account the interests of all parties. Insurance is an agreement between the insurer and the insured who bind each other in an agreement using the principle of freedom of contract in a legal contract that is made. This research uses analyzing the legal protection of policy holders with a normative juridical approach regarding the number of insurance companies that make agreements with exoneration clauses which are regulated in the Civil Code (KUHPerdata), Law Number 40 of 2014 concerning Insurance, and Service Authority Regulations. Finance (OJK) which is relevant to the protection of insurance policy holders. The aim of this research is to find out how the implementation of the principle of freedom of contract is related in insurance law and how protection is provided for the insurer and the insured in contract law.

Keywords: ***Insurance, principle of freedom of contract, policyholder protection***

INTRODUCTION

Insurance and protection arise based on human needs. Everyone understands that in this world, humans are always faced with uncertainty which may be beneficial or detrimental for themselves and others. Humans want a sense of security over their possessions, including a feeling of having sufficient health and wealth, but humans can only try, and only God Almighty can

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determine everything. It cannot be denied that every human being in this world will not be free from the risk of facing danger, because it is human nature to be weaker than the Creator. The possibility of losses arising from disease risk is one of the fundamental aspects reasons between the insurance beneficiary and the insurance company entering into an insurance agreement.

The contract as an insurance contract between the insurance company and the insured agrees to the risk of events in the contract, including events that can occur at any time or cannot be guaranteed. Therefore, clarity regarding the risks faced by the insured, which are borne by the insurance company as premium payments, is mandatory.

The need for insurance protection continues to increase along with the increasingly complex new risks that can harm the company and the community concerned. Protection of insurance services in risk management gives rise to the insurance business as a business. The insurance industry plays an important role in a country's economy by providing risk-taking services and enabling individuals and businesses to make effective plans to protect themselves from risks arising from uncertainty. On the other hand, the insurance industry views the risk of uncertainty as measurable and usually has considerations that support taking risks that may occur. Although the certainty of whether an agreed risk will be realized is still uncertain, no one wants the possibility of someone suffering a loss or losing something. Therefore, society always tries to prevent everything related to risk from becoming a reality. Those who do not want to take risks should try to prevent loss or damage, including by taking out an insurance policy that provides legal certainty to support claims arising from risks that occur.

Legal certainty protects people seeking justice from the arbitrary actions of certain people and allows someone to get what they want in certain circumstances. People want legal certainty because it makes society more orderly. Security itself is the goal of legal stability. On the other hand, the community is impacted by the implementation and enforcement of the law, namely because the law is aimed at local communities, the implementation and enforcement of the law must provide benefits and advantages for local communities, including policyholder contract law.

Policyholder protection is the only written proof that an insurance contract has been entered into between the insured and the insurance company, and is very important evidence for policyholders. The contents of the insurance contract indicate the existence of a binding insurance contract, and the insurance policy proves that the risk has been transferred to the insurance company. Based on Indonesian regulations regarding insurance and legal protection for policy holders as regulated in the Law of the Republic of Indonesia concerning Insurance No. 40 of 2014

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concerning Insurance.3

The rapid development of the world of insurance in various fields such as technology, products, specialists and management is not in accordance with the public's perception, especially insurance buyers, about insurance itself. Apart from that, the process of paying insurance benefits to heirs by the insurance company does not always go according to plan. The expected amount is sometimes received quickly, often late, with complicated procedures that do not correspond to what was promised, and sometimes not received at all, except for a small portion of the premium that must be paid back to the insurance policy owner according to what he has. Of course, things like this frustrate heirs who need money. In the end, problems often drag on, even going to court because the heirs feel aggrieved and accuse the company of not keeping promises previously agreed upon. However, insurance companies always have strong reasons for not settling or rejecting claims submitted.

In most cases, delays or rejection of claims are caused by the insurer's lack of honesty in capturing the facts and providing proposals regarding settlement in the insurance letter submitted. For example: health problems, work, smoking, etc.

Some of the main problems that insurance buyers often complain about are:

1. Agents do not deposit insurance premiums collected from insurance buyers;
2. The dollar exchange rate is inappropriate;
3. Unsatisfactory service, intentional or unintentional;
4. Payment of unpaid or deferred debts;
5. Rejection of compensation claims without clear reasons;
6. Unilateral termination of the contract, etc.

Cases like this are actually common in many insurance companies, but are rarely reported widely in the media and even with the increasing use of social media, these cases are generally not widely reported. Generally, disputes between insurance beneficiaries and insurance companies are resolved through deliberation outside of court. Company management will certainly try to prevent negative news about the company from being published in the media. Regardless of who is right or wrong, negative news will certainly reduce public trust in the insurance company concerned.

One of the things that is quite difficult to resolve due to a lack of understanding of the problems related to insurance cases is the issue of compensation, namely the amount of money provided by the insurance company to the insured or insurance company. It is clear that if the

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insurance parties do not implement the agreement in good faith, there will be a gap between what is expected (das sollen) and the reality that exists in society (das sein). 5 Regarding insurance issues between the insurer and the insured, all regulations in the insurance legal system has the basic principles of insurance as a form of agreement, which includes:

1. Insured Interest (Insurable Interest);
2. Good Faith (Utmost Good Faith);
3. Indemnity Compensation;
4. Subrogation;
5. Contribution;
6. Proximal Cause (Proximate Cause).

In general, insurance also has five important principles as a basis for making decisions regarding the insurance company or the insured's insurance company, including:

1. Principle of Freedom of Contract;
2. Principle of Consensualism;
3. Principle of Pacta Sun Servanda;
4. Principle of Good Faith;
5. Principles of Personality (Personality).

The principle of freedom of contract is general, namely that everyone has the right to freely sign or not sign a contract, but it must always be based on the mutual interests of the parties to the agreement and in the contract there must be a reasonable balance of differences.7

The agreed insurance contract must be made unilaterally by the owner of the insurance company or insurance company in the form of an insurance contract because it can be used economically and in terms of time and can be easily accepted and used by the insured and insured by the insurance company itself. The position of the insurer is considered higher than the insured. This is because insureds are often considered weaker in terms of education, economic understanding and negotiation strategies compared to insurance buyers. Therefore, parties in a stronger position often take advantage of certain opportunities to define individual provisions in an agreement that can expand or even limit something of the agreed policy, thereby giving rise to uncertainty regarding its actual form.

These conditions must be determined and agreed upon by the parties in the insurance contract and legal certainty of these conditions cannot be found in the insurance contract, because of the content and meaning of the clause. The general terms of an insurance contract are

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designed in such a way as to favor the party who has a stronger position. Based on Government Regulation Number 73 of 1992, Article (19) paragraph (2) regulates that insurance contracts or any form of contract, including attached documents, cannot be subject to multiple interpretations. Other provisions related to insurance contract provisions are also regulated in OJK Regulation Number 1/POJK.07/2013 concerning consumer protection for financial services and implementation rules are regulated in OJK Circular Letter Number 12/SE.OJK.07/2014 concerning the Financial Services Authority establishing guarantee standards which is very strict in insurance contracts. However, many OJK provisions are not implemented in insurance contracts. Many parties believe that business entities or insurance companies are trying to limit the insured's responsibility for losses by setting standard clauses that violate the law. Due to the lack of government control, economic actors are not included in the ranks of those providing standard contract standards.

The principle of freedom of contract can play an important role in insurance contracts to maintain balance between policy holders and other parties, where basically people do not have the ability to negotiate or change the contents of the contract in order to protect themselves if a problem of legal imbalance occurs.

Based on the background above, several main research problems can be identified, namely as follows:

1. Can insurance legal agreements be based on the application of the principle of freedom of action?
2. How are policyholders protected by insurance law, especially as insureds?

RESEARCH METHODS

Starting from this research problem, this research was carried out using a normative juridical research approach. This legal study utilizes bibliographic documents or secondary data. By using the nature of prescriptive research, the author can assess whether it is true or not through library data collection methods by utilizing materials in the form of books, relevant laws and regulations, documents and other media that can be used as data or theoretical documents being researched. . The research methodology used is analytical descriptive, namely describing all conditions and events, as well as analyzing ongoing implementation.

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RESULT AND DISCUSSION

The concept of insurance or guarantee is regulated in Article 246 of the Criminal Code, namely: "Insurance or guarantee is an agreement made by the insurer with the insured party to receive a certain amount of insurance premium as compensation for losses to the insured party, or failure to obtain profits that he hopes to obtain, which may arising from an uncertain event."

Based on this understanding, several conclusions can be drawn regarding insurance contracts, namely: the definition of insurance in Article 246 of the Criminal Code only applies to loss insurance. Based on this understanding, several conclusions can be drawn regarding insurance contracts. Thus, Article 246 of the Criminal Code has the following definition of insurance:

a. Insurance is a conditional contract. This is due to the implementation of obligations the insurer is contingent on the occurrence of certain events;
b. Insurance is a reciprocal agreement because it involves rights and obligations between the insured and the insurer;
c. Insurance is a compensation agreement, as Article 246 of the Criminal Code states that the insurer is obliged to compensate for losses actually experienced by the insured.

The definition of insurance in Article 1 paragraph 1 of Law Number 40 of 2014 concerning insurance activities is as follows: Insurance is an agreement between two parties, namely the insurance company and the insurance customer, as a basic facility for receiving insurance premiums from the insurance company in exchange for compensation for losses. :

a. Providing compensation to insurance policy holders for losses, damages, unexpected expenses, lost profits, or obligations to third parties that may be incurred by insurance policy holders as a result of uncertain events; or
b. Payments may be based on the insured's death or on the insured's life with guaranteed benefits and/or on investment performance.
c. Insurance is a contract that must meet certain requirements to be valid. In addition, there must be an agreement between the insurance company and the insured. General principles of agreement/contract law also often apply to insurance contracts.

The following principles also apply as a basis for entering into insurance contracts, as follows:

a. The principle of freedom of contract is regulated in Article 1338 paragraph (1) of the Civil Code which states, "Every agreement that is legally made has binding legal force for the parties who

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make it. 13 This illustrates that the principle of freedom of contract gives the parties the freedom to:

1. Signing or not signing the agreement;
2. Make an agreement with anyone;
3. Determine the objectives, implementation and terms of the agreement;
4. sign or not sign the agreement.

The parties not only have the right to determine the contents of the contract but also supervise the implementation process. Individual interests and community interests must be balanced by the Government as the bearer of public interests. Contract sanctions enter the realm of public law when contract law is enforced by the government. Thanks to government intervention, contract law can be reformed.

b. Principle of Consensualism

Article 1320, paragraph (1) of the Civil Code stipulates that one of the conditions for the validity of an agreement is the existence of agreement between the parties involved. 14 Based on the agreement aspect, it means that the agreement is often not formalized but is determined through mutual agreement from both parties. An agreement occurs when the desires and statements of both parties are in harmony.

c. Principle of Pacta Sunt Servanda

The Pacta Sunt Servanda principle is also known as the principle of legal certainty, this concept is related to the consequences of agreements. In accordance with Article 1338 of the Civil Code which states that a valid agreement has legal consequences, the judge or third party is obliged to respect the provisions of the agreement made by the parties in accordance with the law. and not interfere with the contents of the agreement.

d. Principle of Good Faith (Goede Trouw)

The principle of good faith which states that "Agreements must be executed in good faith," is based on Article 1338 paragraph (3) of the Civil Code. 16 Both parties, namely creditors and debtors, are obliged to comply with the provisions of the agreement based on a sense of trust or good faith. , in accordance with the principle of good faith. The two types of goodwill principles are relative and absolute, one pays attention to the target's actual attitudes and behavior; in good faith, base the assessment on this matter containing rationality and fairness, and apply objective standards in assessing the situation (objective evaluation).

e. Principles of Personality (Personality)

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The principle of personality is a determining factor in whether an individual will enter into or arrange an agreement solely for personal gain. Derived from several articles of the Civil Code, the general principle is that a person's will is not permitted to help approve an agreement for his or her personal benefit. Because the agreement only binds the parties involved, the agreement made by the parties only applies to those who participate in it.

In Indonesia, insurance law is regulated by various regulations, such as the Civil Code, KUHD, Insurance Law and financial services authority regulations related to insurance law. 17 of the Civil Code regulates profit and loss agreements in Chapter IV, while the Civil Code regulates various types of insurance such as transport insurance, life insurance, agricultural insurance and fire insurance. However, this article cannot limit the emergence of other types of guarantees that suit people's needs, so that the parties can adjust the insurance contract according to their needs.

In fact, the application of contract law to insurance compensation often raises many different problems. Interpretation disputes, disputes between policyholders and insurance companies, and legal uncertainty can prolong the claim settlement process and increase costs for all parties involved. Legal certainty must fulfill the four legal requirements of an agreement: consent of will, right to act, certain matters, and legal cause.

Principle of Freedom of Contract

The term "Contract" in the terminology of "Contract Law" is the same as the term "Contract" in English. 18 New now known by the terms as:

a. With relatively good intentions, contract law was designed to regulate agreements documented in writing exclusively. Therefore, people's questions regarding “where is the contract located,” indicate that they are asking about written contracts;
b. In a business context, contract law is considered the principles governing agreements;
c. Contract law only regulates agreements made by both parties. Therefore, it does not make sense to use contractual terms such as “Grant”, “Inheritance Contract”, and so on.

In contract law there are five basic principles, namely the principle of freedom of contract, the principle of consensus, the principle of Pacta Sun Servanda (the principle of legal certainty), the principle of good faith, and the principle of reciprocity. 19 The principle of freedom to contract independently is one of the principles utilized by the parties involved as a basis for agreements between insurers and insureds such as insurance contracts. Even though this principle is stated as an important principle in insurance law, its application is not the only principle that needs to be

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considered and other principles need to be considered as a form of agreement.

The principles of contract law play an important role in the context of settling insurance claims. First, the agreement signed between the insurance company and the insurance buyer must be clear and transparent. The parties involved must reach an agreement regarding the details of the insurance contract, such as the coverage available, the amount of premium to be paid, and how to settle claims. Second, Article 1320 of the Civil Code regulates that the parties to a contract must have full capacity to carry out civil actions; In this case, the policyholder must be able to understand the consequences of the agreement he or she makes, while the insurer must be able to provide insurance products and frequently settle claims. Additionally, the specific subject matter of the contract must be clear and unambiguous. The main subject of an insurance claim is the insured risk. For example, the need for medical treatment due to illness, injury, or vehicle damage due to an accident. Finally, good reason shows that there is a legal or statutory reason for entering into the contract.

The principle of freedom of contract is often used as the basis for standard contracts governing relationships between consumers and businesses. These standard contracts are used in most types of businesses because of their convenience, cost savings and time savings. Examples include insurance contracts, banking transactions, commercial leases, real estate sales and office building rentals, credit card issuance, and contracts for the transportation of goods by land, sea, and air.

Considering the provisions of Article 1320 of the Civil Code, it can be concluded that the principle of freedom of contract is not misused in the contract model in standard business contracts. 21 In practice, instead of a balanced negotiation process between the parties- the parties involved, the commercial contract is actually made unilaterally by the insurance company, which prints and sends the agreement to the other party for approval.

The party with less power, usually the insured party, is able to review the provisions imposed by the more powerful party. If the less powerful party accepts these terms, the consumer is asked to sign these terms. On the other hand, if the consumer does not accept the terms offered by the economic entity, the transaction cannot proceed.

Individuals in more powerful positions often exploit this advantage to dictate certain terms in standard contracts, resulting in agreements that solely serve the interests of the party in a more powerful position. So that the agreement contains provisions that benefit the party or eliminate certain responsibilities or obligations that are their responsibility, or what is commonly known as

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an "exoneration clause." Therefore, if the parties have different opinions, those opinions must be rejected because they will affect the nature, aims and objectives of the contract. "What is meant by "balanced" in terms of the contents of the regulations is as follows:

a. This is intended to create a more balanced position of the parties in the relationship, meaning that there is a balance of burdens in the contractual relationship. This means that a fair allocation of rights and obligations in contractual relationships without regard to the processes involved must be followed to determine the outcome;
b. Balance appears to be simply the result of a process;
c. To balance the parties' positions, state intervention functions as a coercive and restrictive tool;
d. In principle, balance in the positions of both parties can only be achieved in the same situation (ceteris paribus).

The term "abuse of circumstances" is used to describe the exploitation of certain conditions (contract provisions) by a more dominant party to the detriment of the weaker party. Abuse of circumstances occurs when an individual realizes or should be aware that another person is forced to take legal action due to extraordinary circumstances such as urgency, dependency, inability to think, circumstances that are unusual or not experienced by him, even though this could have been prevented. . For example, due to an urgent need for funds, bank clients who are in debt are obliged to accept conditions determined unilaterally by the bank. They cannot choose to accept or reject a credit contract offered by a bank, even though this condition could be detrimental to the debtor. Standard agreements such as insurance may conflict with the principle of responsible contractual freedom, especially when considering the national legal principle of prioritizing the interests of society which was discussed at the last meeting. The positions of economic actors and consumers are not equal in standard agreements. Economic actors have many opportunities to abuse their position. Economic subjects only regulate their rights. This standard agreement must be managed because it cannot develop freely.

Usually it is an event covered by the policy, for example an accident or loss experienced by the insured. Meanwhile, Article 1338 of the Civil Code emphasizes the principle of freedom of contract, giving the parties the freedom to change and determine the terms of the contract according to their respective needs and interests. In the case of insurance claims, this means the policyholder and insurance company can change the terms of the insurance contract to meet the needs and risks the individual wishes to protect against. For example, they can set the amount of insurance, level of coverage, and claim payments according to the risks faced by the policyholder.

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For many years, Article 247 of the Commercial Code (KUHD) has been used as the basis for carrying out insurance business in Indonesia. However, along with the rapid growth of the insurance industry, especially with the emergence of various innovations and changes, new problems have emerged that require a closer review of the function of contract law in settling insurance claims. The importance of contract law in insurance matters cannot be questioned. The main legal principle that regulates the rights and obligations between the parties involved, the insurance policy holder and the insurance company, is the insurance contract. The level of protection, premium payable and claims settlement provisions are regulated in the terms of the contract. However, as the insurance sector develops, the number of claims completed is increasing.

If we look at daily practice in making an insurance contract, the above regulations apply to insurance companies, but not all of them apply to the insured because in general insurance contracts are presented in the form of a standard contract, the insured can only sign if he has agreed to close the insurance contract. Insurance is usually differentiated as providing insurance protection for a certain amount of money (life insurance), property insurance, and social insurance. Article 246 of the Criminal Code officially limits insurance contracts. This is done for two reasons:

a. The transferred risk is compensated by the premium paid, which in turn serves as a substitute for the losses incurred;
b. The benefits of an insurance contract are absolutely necessary when an uncertain event occurs;
c. The court is the place for resolving complaints from the insurer and the insured; And
d. There are legal consequences in contracts, in insurance contracts there is a reciprocal relationship meaning that each party has rights and obligations.

Legal Protection of Policyholders

Legal protection in the narrow sense is given to legal subjects in the form of legal instruments, both preventive and punitive, both written and unwritten. In other words, legal protection can be understood as a description of the function of law, namely ensuring the creation of peace for all human interests in society, so as to create harmony and balance in social life. Protecting the law in a broad sense is protecting all living creatures, all of God's creation, and utilizing them for a just and peaceful life.

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The legal protection provided to policyholders in connection with the application of standard insurance clauses in Indonesia aims to provide fair treatment as regulated in Law Number 8 of 1999 concerning Consumer Protection. Legal protection for policy holders is further regulated in Law no. Subject 40 relates to Insurance and Financial Services Authority (OJK) regulations. The validity of an insurance contract can be ensured through an agreement in which two parties reach a mutually binding consensus without any external pressure and sign the contract voluntarily

Law Number 40 of 2014 concerning Insurance, which is further regulated and supervised by the Financial Services Authority, regulates in Article 28 of Law Number 21 of 2011 concerning the Financial Services Authority, that "To protect consumers and the public, the Financial Services Authority is given the authority to take action prevention of harm to consumers and society," including:

a. provide information and education to the public regarding industry characteristics, service offerings and financial service products provided;
b. Financial institutions are required to stop their operational activities if there is a risk that could cause harm to the public; And
c. Implementation of any measures necessary to comply with financial services industry regulations.

Regulations regarding the protection of insurance buyers as regulated in Article 26 paragraph (2) of Law Number 14 of 2014, concerning consumer protection in the financial services sector, as regulated in the Financial Services Authority (OJK) Regulations as intended in Article 1 paragraph (1) which states that "the subjects of financial services are commercial banks, people's credit banks, warehouse banks, pension funds, insurance companies, reinsurance companies, financing institutions, pawnshops and guarantee companies, which as long as they carry out permanent business activities or are based on law sharia. ”Article 4 POJK Article Number 1/ POJK . 07/2013 concerning Consumer Protection in the Financial Services Sector.

Legal Protection Factors for the Insured

a. Negotiating Positions of the Parties

In this case, an example can be taken from a credit agreement at a bank, where the customer's position in submitting a credit application follows the provisions set by the bank, there are no restrictions in negotiating interest rates, payment systems and other agreements.

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This negotiation perspective is also linked to the capabilities of the parties involved, especially regarding their economic conditions. The negotiating position of the parties in an agreement is closely related to the consumer's position, this clearly shows that the consumer's position in an agreement is a crucial factor that should not be ignored.

b. Negotiation

Negotiation is an inseparable part of an agreement, because through deliberation all parties can find out the rights and obligations that must be complied with. Negotiations arise because of the individual goals of both parties involved, with the hope of achieving consensus through the negotiation process. The principle of a win-win solution is the fundamental principle that is the goal of this negotiation. In a standard agreement drafted by one party, the scope of negotiations is limited, as outlined in terms communicated by the same party (the producer) in advance, thereby giving the other party the option to accept or reject.

c. Honesty in transactions (fairness)

Proportionality in an agreement can be determined by the exchange of interests between the parties involved, such as debtors or creditors of the agreement. Therefore, the adequacy of an agreement can be assessed from the content of its provisions. The proportionality referred to is regarding the exchange of rights and obligations between the parties, by assessing whether the exchange is effective or there are provisions that burden one of the parties. The presence of transparency in agreements can help create a higher level of symmetry in agreements. Disclosure of information relating to the terms of the agreement must at least be in line with the object of construction of the Consumer Protection Law.

d. There is a balance in an agreement

The contract balance can be changed based on the conditions of the parties before signing the contract. There are at least three aspects in an agreement that need to be considered to achieve this balance, namely: First, the actions of the parties involved regarding the nature of the agreement. It cannot be denied that an agreement can be reached if all parties are committed to implementing the agreement. The legal efforts taken by the parties originate from a statement of the parties' willingness or unwillingness to take legal action. If the conditions and circumstances of the parties are balanced then a good agreement will be reached, conversely if legal action is taken due to the imperfection of one party or both parties, then an agreement can be said to be reached in an unbalanced condition. Second, the balance of the contents of the contract depends on the awareness and agreement of the

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parties involved in drafting the contract.

CONCLUSION

The principle of freedom of contract in contract law requires a balance of positions between consumers and business actors. This imbalance is often exploited by business people to limit their liability by including exemption clauses in unilaterally determining terms and conditions in insurance policies agreed to by both parties. To protect the interests of consumers, including insurance policy holders, regulations have been established regarding the application of standard insurance clauses in Indonesia. The legal protection available to insurance policy holders is regulated in Law Number 18 of 1999 concerning Consumer Protection to ensure justice for both parties.

In the context of insurance law, policyholder protection is also regulated in Law Number 40 of 2014 concerning Insurance and Financial Services Authority (OJK) regulations which guarantee customer rights. The purpose of this law is to provide legal protection that includes access to clear information, comfort, the right to be heard, advocacy, and adequate services. However, insurance companies still maintain standard procedures for evaluating insurance claims. If a claim does not comply with the provisions stated in the policy, the claim can be rejected. Therefore, policyholders need to understand the provisions contained in the insurance agreement to ensure the protection of their rights.

With the aim of realizing legal protection in order to obtain clear information, comfort, the opportunity to voice complaints, obtain advocacy, protection and the right to be served. Procedures for settling insurance claims for policy holders can be carried out if they have fulfilled the provisions stated in the insurance policy agreement. Each company has its own regulations regarding insurance claim settlement procedures. Insurance companies have standard procedures for investigating every claim submitted by a client. If the claim submitted does not comply with the provisions stated in the policy document, the claim will be rejected.

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