

## **On Insurance Claims Liability PT Jamkrindo**

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### **ABSTRACT**

The purpose of this research is to find out and analyze whether a fictitious credit agreement that has been Guaranteed by insurance can make a payment claim and to find out and analyze what is the responsibility of PT Jamkrindo for the credit insurance Guarantee of PT Bank Jateng Blora Branch against the fictitious credit of PT Lentera Emas Raya. The research method used is a normative method based on a case study and literature by collecting legal materials, both primary legal materials and secondary legal materials. The legal materials include books, laws and regulations such as the statute approach and conceptual approach. Research results In a fictitious credit agreement that has been Guaranteed by insurance to be able to make a payment claim, it does not have to be a payment claim, against the insurance claim submitted by the policy holder of PT Bank Jateng Blora branch as a creditor to PT. Lentera Emas Raya to PT Jamkrindo as the guarantor cannot be held responsible due to an unlawful act and has violated the terms of the insurance agreement.

**Keywords:** Bank, Business Fictitious Credit, Insurance, PT Jamkrindo

### **1. INTRODUCTION**

Banking institutions in terms of lending to the public and business entities also have a risk of default by debtors, whether intentional or unintentional, for this reason, the banking law itself has regulated all banking business actors in accordance with article 49 paragraph 1 and 2 concerning a precautionary principle in the context of lending in order to protect against losses incurred by private and state-owned banks or regionally-owned enterprises (Keeton, 1956). In order to reduce the risk of large losses, apart from placing the prudential principle, banking institutions also provide a requirement for a credit Guarantee or insurance institution that can cover if something happens that can cause losses to the creditor bank, which in this case is explained in Article 246 of the Indonesian Criminal Code (Wind et al., 2007). The Commercial Law (hereinafter referred to as KUHD) that:

"Insurance or coverage is an agreement, by which an insurer binds himself to an insured, by receiving a premium, to compensate him for a loss, damage or loss of expected profit, which may he will suffer because of an unspecified event (Murjiyanto & Andani, 2020)."

Referring to the above, a collaboration between banks and insurance emerged which is commonly known as bancassurance. In the General Provisions of the Circular Letter of the Financial Services Authority Number 33/ SEOJK.03/2016 concerning the implementation of Risk Management in Banks Conducting Marketing Cooperation Activities with Insurance Companies (Bancassurance) (hereinafter referred to as SEOJK 33-2016) explains that what is meant by

bancassurance is a collaborative activity between Banks with insurance companies in order to market insurance products through banks (Boyd et al., 1993).

The collaboration between these two institutions can provide an advantage for many parties, namely both the bank, the insurance company and the customer itself (Wüthrich & Merz, 2008). According to Trisadini and Shomad, the practice of bancassurance activities also cannot avoid various risks, both legal risk and reputation risk, therefore it is necessary to carry out a risk management for banks that carry out marketing cooperation activities with an insurance company (bancassurance). Insurance is a risk transfer institution that has a very important meaning for the community, as well as the company. Insurance is also a non-bank financial institution, which is engaged in services provided to the public in overcoming risks if they occur at any time (Carmichael & Pomerleano, 2002). For the public, a person who closes an insurance agreement will feel safe because he gets protection from the possibility of an unexpected or unexpected loss. Insurance arrangements in Indonesia are regulated in the Law of the Republic of Indonesia No. 40 of 2014 concerning Insurance Business (Insurance Law) (No, 40 C.E.).

In this study the authors took a case study where the Central Java bank Blora branch in 2019 had distributed business loans to PT Lentera Emas Raya worth 17,500,000,000 seventeen and a half billion and as the guarantor insurance institution was PT Jamkrindo Jateng where after checking that the proposed project by the debtor by providing a copy of the SPMK Number: 0257/XII/SPMK-RSN/2018 dated December 4, 2018 for the 6-Story Equivalent Soldier Housing Development Project in the South Jakarta Region as well as the project Time Schedule document which is a fictitious document because there is no work project at that location (Seputra et al., 1991). Based on the findings of the Central Java bank audit team which stated that the project was fictitious, the Bareskrim Polri conducted an investigation on the basis of Police Report Number: LP/A/0095/II/2021/Bareskrim, dated February 16, 2021; Alleged Corruption in the Distribution of Project Loans at PT. Central Java Regional Development Bank Blora Branch to PT. Lantern Emas Raya with a total ceiling of Rp. 17,500,000,000,- (Seventeen billion five hundred Rupiah) TA. 2018 to 2019, as referred to in Article 2 paragraph (1) of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts Corruption in conjunction with Article 65, Jo Article 55 paragraph (1) of the 1st Criminal Code.

## **2. RESEARCH METHOD This**

research uses a normative method based on a case study and literature by collecting legal materials, both primary legal materials and secondary legal materials. The legal materials include books, laws and regulations such as the statute approach and conceptual approach. And the Case



approach approach where the Legislative Approach (statute approach) is a type of approach that is carried out by reviewing all laws and regulations in order to answer legal issues

### **3. RESULTS AND DISCUSSION**

Responsibilities of PT. Jamkrindo Against Credit Insurance Guarantee PT Bank Jateng Against Fictitious Credit PT. Lentera Mas Raya Bond of Cooperation Agreement Between PT Jamkrindo and Bank Jateng Cab. Blora, in this legal research using a case study or case study where the author sees and examines the cooperation agreement between Perum Jamkrindo and PT. BPD JATENG concerning Guarantee of construction and construction credit and procurement of goods/services number: 150/Jamkrindo/OP-01/XII/2018, 11866/HT.01/04 KRD/2018 Signed by Perum Jaminan Credit Indonesia represented by Amin Mas'udi as Director of Guarantee Business in accordance with the Decree of the Minister of State-Owned Enterprises with PT. BPD Central Java was represented by Hana Wijaya as Director of Retail Business and Sharia Business Unit in Semarang on 27 December 2018 and Jakarta on 14 December 2018 (Parimita et al., 2017). The object of the guarantor is a Guarantee for credit that meets the requirements given by PT Bank Pembangunan Daerah Blora branch to PT Lentera Emas Raya with the designation of Construction Loans and Procurement of Goods/Services in accordance with the Work Order given by the TNI Headquarters in the construction project of Houses and Facilities for TNI Members located in the Indonesian Army Complex in East Jakarta and Depok, worth Rp. 17,500,000,000 (Seventeen and a half Billion) (Dyah, 2020).

The agreement also contains Guarantee d Requirements, namely (Khera, 2011). Guarantee d as the recipient of the Construction Credit and the Procurement of Goods/Services are those who have met the following requirements:

- a. Classified as Micro, Small, Medium Enterprises or Cooperatives (UMKM-K) according to the provisions of applicable laws;
- b. Use of Credit and/or financing that will be Guarantee d for business activities in the territory of the Republic of Indonesia;
- c. Already have SPMK/SPK/Original Contract for a project to be worked on and or the procurement of goods based on the results of direct appointments or through auctions that have been carried out by users of Construction Services and Procurement of Goods/Services;
- d. Has fulfilled all the requirements for the Construction Credit and the Procurement of Goods/Services as required by the GUARANTEE RECIPIENT;

- e. All business legality documents (among others: business permits in the field of construction services, certificates, classifications and company qualifications) from GUARANTEE D are complete, still valid, free of problems and legally valid;
- f. Do not have bad debts at Financial Institutions as evidenced by the Financial Services Authority Financial Information Service System (SLIK OJK) at the time of credit application;
- g. Do not have arrears in Claims/transfer of claim rights to the Guarantee ;
- h. Has signed an Agreement on the transfer of Rights to Receivables or binding of project invoices (cessie receivables) which contains absolute submission of Guarantee d receivables/receipts to the Guarantee Recipientfor the work financed and notified to the Project Manager/Treasurer. If the Guarantee d And The Guarantee Recipientdo not bind the cessie of receivables and a loss occurs, then the loss that occurs is outside the Guarantee of the Guarantee Party.

In the cooperation agreement there are several things that regulate claims if there is a dispute later, Article 11 Claim Rights (Tcherneva, 2020)

- a. Claim Rights for Construction Loans and Procurement of Goods/Services Pattern By Project (per project) arise, if there has been arrears of principal and/or interest and the Credit Agreement has matured and is no longer extended.
- b. Claim rights for construction credits and goods/services procurement with standby Loan, claim rights arise if GUARANTEE D does not fulfill Credit obligations to GUARANTEE RECIPIENTat the end of the credit repayment deadline per project that has been determined per withdrawal, per project, per Guarantee Certificate (SP) .

**Article 12 regulates the procedure for submitting a Claim.**

Guarantee Recipienthas the right to submit a claim submission letter to the Guarantee at the latest 3 (three) months after the claim right arises.

The claim submission letter (attachment 9) as referred to in number 1 of this article is attached with:

- a. A copy of the relevant Guarantee Certificate (SP) and its attachments for credit Guarantee s carried out with a conditional automatic cover (CAC) mechanism. GUARANTEE is required to first issue a Certificate of Guarantee (SP);
- b. The original Certificate of Guarantee (SP) concerned and its attachments for credit Guarantee s carried out with a Case by Case (CBC) Guarantee mechanism;
- c. Minutes of Claims containing the calculation of the amount of credit arrears by the GUARANTEE RECIPIENTsigned by the GUARANTEE RECIPIENTand the GUARANTEE D (attachment 10);

- d. Photocopy of the loan card/account at maturity which is stamped and signed by the authorized official;
- e. Receivable payment schedule for the Transfer of Billing Rights signed by the GUARANTEE and GUARANTEE D;

Supporting documents, namely:

- a. Conditional Automatic Cover (CAC) must attach the documents as referred to in Article 5 (five) paragraph 4 (four) of this agreement;
- b. Case by Case (CBC) Guarantee . Specifically for the Guarantee with the Standby Loan pattern, it is mandatory to attach a monitoring report document that contains a written report regarding the cash flow flow of the loan and can prove the failure per project;
- c. Copy of Contract/SPK/other similar documents;
- d. Copy of project implementation progress report or last physical inspection report;

The GUARANTEE is obliged to inform the GUARANTEE RECIPIENT, if the attachments to the submission as referred to in paragraph (2) of this Article have not been received completely and correctly;

GUARANTEE RECIPIENT must fulfill the lack of attachments as referred to in number 3 of this Article within 30 (thirty) days at the latest from the written notification;

The GUARANTEE RECIPIENT can submit the amount of the Loss (principal arrears + interest + fines) multiplied by the percentage of the Amount of Guarantee , with a maximum limit of realized Credit multiplied by the percentage of the Amount of Guarantee ;

The basis for calculating the amount of Credit claimed is stated in the Minutes of Claims signed by the GUARANTEE and GUARANTEE D RECIPIENT. If GUARANTEE D is unable to sign the Minutes of Claims and schedule for payment of Receivables for the Transfer of Billing Rights, the GUARANTEE RECIPIENT is obliged to explain the reasons why GUARANTEE D cannot sign the Minutes of Claims and the schedule for payment of Receivables for the Transfer of Claims.

If GUARANTEE D provides additional collateral in the form of cash collateral (margin deposit), the amount of the Claim value is a maximum of 100% of the arrears of principal, interest and fines (if any) minus cash collateral.

### **Article 13 concerning Claim Decisions**

1. The GUARANTEE shall make a decision on the Claim submitted by the GUARANTEE at the latest 15 (fifteen) working days from the time the claim submission file is received completely and correctly by the GUARANTEE .
2. The GUARANTEE may conduct research before making a decision on the Claim submitted by the GUARANTEE RECEIVER.

3. If the claim submission is approved, the GUARANTEE shall submit a Letter of Approval to the GUARANTEE RECIPIENT which contains:
  - a. The number of claims submitted by the GUARANTEE ;
  - b. The number of claims to be paid by the guarantor
  - c. The amount of loss borne by the guarantor
4. If the claim submission is rejected, the GUARANTEE submits a Claim Rejection Letter to the GUARANTEE RECIPIENT by stating the reasons for the rejection.
5. The GUARANTEE shall pay the amount of the Claim approved in the Claim Approval Letter within 15 (fifteen) days from the date of the Claim Approval Letter to the GUARANTEE RECIPIENT.
6. If the GUARANTEE is late in completing the Claim until the specified time has passed, the GUARANTEE will be subject to administrative sanctions in the form of a written warning/warning letter to the GUARANTEE RECIPIENT

**Article 14: Transfer of Claim Rights**

1. Since the claim is paid by the GUARANTEE , the claim is legally turns into the GUARANTEE 's Billing Rights to the GUARANTEE D for the amount of the Claim paid by the GUARANTEE .
2. Declaration Letter Form (attachment 10.1) is made and signed by GUARANTEE D at the same time as the realization/contract of Construction Credit and Procurement of Goods/Services between RECIPIENT OF GUARANTEE and GUARANTEE D. This is to further ensure the fulfillment of the completeness of the Claims file and at the same time the realization of the GUARANTEE D collection rights later.
3. After the claim is paid by the GUARANTEE , the GUARANTEE and the GUARANTEE both jointly and individually are still obliged to actively make efforts to collect/withdraw the amount of the loss until it is paid off, for which the GUARANTEE through this Agreement gives special power to the GUARANTEE .
4. Every receipt of payment from GUARANTEE D received by GUARANTEE RECEIVER is directly entered into the appointed GUARANTEE .
5. If the effort to collect the GUARANTEE 's Collection Rights as referred to in paragraph (4) of this Article has been carried out optimally, but GUARANTEE D has not paid off all the debts, then the GUARANTEE and/or GUARANTEE RECIPIENT will take legal action in the context of the said collection and/or disburse the Credit ( if there).
6. The proceeds of collection and/or disbursement of collateral are used to pay off the GUARANTEE 's Billing Rights and if there is still an excess, it will be returned to FRIENDS.

7. Upon receipt of the GUARANTEE 's claim rights within a period of more than 6 (six) months from the date of payment, the GUARANTEE RECIPIENT is given a collecting fee of 5 0/6 (five percent) of the total receipt of the GUARANTEE 's claim rights (including VAT 10 0/0).
8. The GUARANTEE shall pay the Collecting Fee to the GUARANTEE RECIPIENT within 5 (five) Days at the latest from the time the GUARANTEE receives the request for Collecting Fee payment in writing from the GUARANTEE RECIPIENT.
9. The results of the collection of the GUARANTEE 's Claim Rights as referred to in paragraph (6) must be paid no later than 1 (one) month after the payment is received by the GUARANTEE RECIPIENT and if it is not implemented, an administrative sanction will be imposed in the form of a written warning/warning letter from the GUARANTEE .

#### **Article 15 : Loss of Claim**

Right The right to submit a claim automatically becomes invalid if:

- a. The Credit Agreement along with the deed of amendment and/or the accompanying Addendum is canceled by the Court;
- b. GUARANTEE RECIPIENT does not fulfill one or more of the terms and conditions both contained in this Agreement and the Certificate of Guarantee (SP);
- c. GUARANTEE RECIPIENT does not submit a claim to the GUARANTEE within 3 (three) months from the date the claim rights arise;
- d. GUARANTEE RECIPIENT does not complete the claim submission file until the time limit agreed in Article 12 number 2 of the Agreement;
- e. THE GUARANTEE returns, transfers and/or withdraws the collateral (if any) without first informing the GUARANTEE ;
- f. The existence of a court decision which has permanent legal force to decide that there is a criminal/civil act that harms the GUARANTEE which is carried out by the GUARANTEE RECIPIENT himself, or jointly between the GUARANTEE RECIPIENT and the GUARANTEE D or there is sufficient data showing conditions detrimental to the GUARANTEE , whether carried out by the GUARANTEE RECIPIENT alone or jointly. the same as TEMAMIN;
- g. GUARANTEE RECIPIENT and/or GUARANTEE D proven to provide false information, data, or documents;
- h. GUARANTEE RECIPIENT and/or TEMAMIN proven to hide information, data, or documents that are not in accordance with the provisions of the Guarantee ;
- i. It is proven that there is bad faith from the GUARANTEE RECEIVER and/or TEMAMIN.

#### **Article 16 : Unsecured Losses The**



GUARANTEE is not required to pay compensation or claims in the event that the loss is caused by:

- a. Nuclear reactions, radioactive touch, radiation of atomic nuclear reactions that directly result in the GUARANTEE D failure to repay the Credit regardless of how and where it occurs;
- b. The occurrence of war (whether declared or not) or part of Indonesia's territory (in a Guarantee d area) is declared in a state of danger or in a state of war emergency;
- c. The occurrence of riots related to political movements that directly resulted in the failure of GUARANTEE D to pay off its credits;
- d. The occurrence of natural disasters resulting in direct losses to TERJAI•vmx1;
- e. Documents related to credit/financing and the business being financed are not valid;
- f. The existence of an evil conspiracy carried out by the PARTIES involved in this Agreement as evidenced by the existence of a Court decision that has permanent legal force (Inkracht);
- g. The existence of provisions/policies of the Government of the Republic of Indonesia which causes GUARANTEE D's business to be halted, resulting in losses;
- h. Payment of the term has been made by Bouwheer through the GUARANTEE D account at the GUARANTEE RECIPIENT, but is partially or completely disbursed by GUARANTEE D for funding other projects without fulfilling the conditions agreed upon between the GUARANTEE RECIPIENT and GUARANTEE D;
- i. Bouwheer is unable to make project payments, either in part or in full due to unavailability of funding sources;
- j. There are additional work that is not supported by the Addendum SPK or similar documents which at least contain additional work, additional work value, completion time and related sources of payment;
- k. Negligence or error made by the GUARANTEE RECEIVER; l. Construction work and/or procurement of goods/services listed in the contract are not contained in the budget items of the APBN/APBD, BUMN/BUMD or other documents that are equated with DIPA/DIPDA;
- l. GUARANTEE RECIPIENT does not report and apply for credit Guarantee for the GUARANTEE D credit extension/supplement/restructuring;
- m. There is no progress report on project work performance carried out by GUARANTEE D from the Project Owner.

### **Unlawful Acts**





In the agreement, a cooperation agreement was made between PERUM JAMKRINDO and PT. BPD JATENG concerning Guarantees for construction and construction loans and the procurement of goods/services: 150/Jamkrindo/OP-01/XII number /2018 11866/HT.01/04 KR/201 and from the findings of the Criminal Investigation Unit of the Police there are unlawful acts from several parties who intentionally and violate the law with the intent to gain personal gain.

### **Errors and Negligence of Banks and Debtors**

In the case study of this research, it can be explained that several unlawful acts were made by related parties in terms of applying for credit, Teguh Kristiono as Director of PT. Golden Lantern Raya and Bank Jateng Blora Branch who violated banking regulations and there was a state loss. As for the unlawful acts committed by creditors and debtors who in this case make a binding agreement to a third party PT. Jamkrindo are:

1. Deviations from the relevant laws and regulations in granting project credit to PT Lentera Emas Raya at PT Bank Pembangunan Daerah Jateng Blora Branch in 2018 to 2019 are as follows:

- a. Credit Application

Even though there is no work project, Br. TEGUH KRISTIONO allegedly used the Letter of Agreement (LoA) document signed by Br. TEGUH KRISTIONO and Br. Lt. Col. DINDIN KAMALUDIN as well as a copy of the Work Start Order (SPMK) for the work on the construction of the 6-storey Equivalent Soldier Housing Tower in Kalibata and Depok, as the basis for applying for project credit to Bank Jateng Blora Branch. In the SPMK, it was as if PT Lentera Emas Raya (Br. TEGUH KRISTIONO as Director) was appointed as the executor of the work.

In applying for a loan for the Kalibata project of Rp. 10,000,000,000.00, Mr. TEGUH KRISTIONO provided the required documents, including a copy of the SPMK Number 0257/XII/SPMK-RSN/2018 dated December 4, 2018 even though it was still in November 2018. As for the Depok project credit application, it was Rp. 7,500,000,000.00 in January 2019, Mr. TEGUH KRISTIONO provided the required documents, including a copy of the SPMK Number 007/I/SPMK-RSN/2019 dated January 16, 2019.

Until before the credit disbursement, the credit application was not accompanied by an original Work Order (SPK)/SPMK/Work Contract, Trading Business License (SIUP) and Company Registration Certificate (TDP) which are still valid, as well as a Standing Instruction containing the approval of the Project Commitment Making Officer that the payment is made through the checking account of PT. Lantern Emas Raya at Bank Jateng Blora Branch.

- b. Verification, Analysis, Approval, Signing of Credit Agreements, and Loan Disbursement

1. The Credit Analyst Team did not perform an authentication test on the copy of the SPMK received by the Bank Jateng Blora Branch to the Logistics Assistant at the Army Headquarters-Logistics Staff listed in the copy of the SPMK. The Army Headquarters Logistics Assistant through Letter Number B/3489/IX/2021 dated September 10, 2021 stated that the two SPMKs never existed and were never issued by the Indonesian Army. According to Mr. DIAN ADITYA PRADANA and Ms. RIZA BEBASARI, the authentication test on the project in Kalibata was not carried out due to the prohibition from Mr. TEGUH KRISTIONO at the meeting in Bandung. Mr. DIAN ADITYA PRADANA also stated that there was a similar prohibition from Br. TEGUH KRISTIONO for the project authentication test in Depok.
2. The Credit Analyst Team also did not verify whether the work carried out by the debtor was real, both the type of work and the budget during On the Spot (OTS) at the project site. According to Mr. DIAN ADITYA PRADANA, Ms. RIZA BEBASARI, and Br. NUGROHO LUHUR PURWINANTO who did the OTS, no verification was carried out on the existence of the work at the project site because of the prohibition from Br. TEGUH KRISTIONO/Br. Lt. Col. DINDIN KAMALUDIN at a meeting in Bandung. OTS at the Kalibata project site was only carried out from inside the car and OTS at the Depok project was only in the form of a meeting with Br. TEGUH KRISTIONO and Br. Lt. Col. DINDIN KAMALUDIN on vacant land.
3. Analysis of project credit applications from PT. Lentera Emas Raya was still carried out even though the document/information requirements were incomplete and did not match the reality and the proposed project credit facility was subsequently approved by Br. Rudatin Pamungkas as Pincab Blora.

When conducting the analysis, the Analyst Team has not received the original SPK/SPMK/Work Contract, valid SIUP and TDP, as well as the Standing Instructions that have been approved by the Project Commitment Making Officer stating that the payment is through the checking account of Bank Jateng Blora Branch and PT. Golden Lantern. The Credit Analysis Memorandum (MAK) does not include data on bad credit Br. TEGUH KRISTIONO as Director of PT. Lentera Emas Raya and stated that a visit to the Decision Making Officer at TNI AD Headquarters and site verification to confirm the existence of the project had been carried out despite the fact that it was not implemented. The project credit facility proposal from the Analyst Team was subsequently approved by Br. Rudatin Pamungkas as Pincab Blora.

4. Pincab Blora signs the Deed of Credit Agreement without the presence of all collateral owners, and approves credit disbursement on the same date as the Deed of Credit

Agreement even though Bank Jateng Blora Branch has not received the original SPK/SPMK/Work Contract, the original Certificate of Ownership (SHM) for additional collateral, as well as a Standing Instruction that has been approved by the Project Commitment Making Officer stating that the final payment is through the checking account of Bank Jateng Blora Branch and PT. Golden Lantern.

5. Pinca Blora and Deputy Head of Bank Jateng Branch (Pinca) Blora approved the withdrawal of credit funds from the account of PT. Lentera Emas Raya without project authentication/verification and OTS on the project.

The insured's dishonesty in stating or giving information about the facts about the object being insured to the insurer can cause the cancellation of an insurance. This is related to Article 251 of the Commercial Code, which reads: "all false or untrue notices, or all concealment of circumstances that are known to the insured, even though they are carried out in good faith, of such a nature that the agreement cannot be concluded. , or it is not held on the same terms, if the insurer knows the true condition of all of these things, the insurance is void."

Furthermore, it can be explained based on article 1365 of the Civil Code that all unlawful acts, which bring harm to others, oblige the person who caused the loss because of his mistake to compensate for the loss. Meanwhile, if it is seen from the article that an act can be said to be against the law, then the act must meet certain elements. Against the law itself was previously defined as an act that is contrary to the things that have been regulated in the law or written law only.

However, today or more precisely since 1919, there is a decision of the Dutch Supreme Court in the Arrest Cohen-Lindenbaum case (HR January 31, 1919), the notion of being against the law is not only limited to written laws or laws, but also unwritten laws. . Thus, an unlawful act is defined as an act that is contrary to the following matters:

1. Violating the law, this means that the act committed clearly violates the applicable law;
2. Violating the subjective rights of others, this means that the actions taken have violated the rights of others which are Guaranteed by law (including but not limited to personal rights, freedoms, material rights, honor, good name, or other individual rights );
3. Contrary to the legal obligations of the perpetrator, in this case are legal obligations both written and unwritten, including public law;
4. Contrary to decency, this means moral rules (which have been regulated in Article 1335 in conjunction with Article 1337 of the Civil Code);
5. Contrary to the element of prudence that should be in society. In this case, it is based on unwritten law (so it is relative). That is an act that is done against a good or proper attitude in society to pay attention to the interests of others.

An act is said to contain an element of error, if the act is done because of an error due to intentional or negligence. Errors caused by self-intention means that the error was made with the awareness of a normal person and knows that the consequences of his actions will cause harm to others. Meanwhile, an error caused by negligence means that there is an act of ignoring something that should be done, or not being careful and thorough in something that causes harm to others. The thing that can invalidate the element of guilt from an act is if the mistake is made because of a forced situation (*overmacht*) or the perpetrator has an unhealthy soul (*crazy*).

The element of causality or the relationship between the loss and the act itself means that there is a causal relationship between the act committed and the loss incurred and if the perpetrator does not commit the act, the loss will never exist. For an act to be said to be against the law, the act must contain an element of loss. This means that due to the actions of the perpetrator, a loss arises. The losses referred to in this case are divided into two, namely material and immaterial losses. What is meant by material loss in an act against the law itself, is only loss, namely loss due to damage/loss of goods and/or property belonging to one party caused by the actions of the other party, this is in accordance with the definition stipulated in Article 1246 of the Law. Civil law. Meanwhile, immaterial losses in this case are losses incurred by the unlawful act which cannot be measured with certainty, for example fear, disappointment, regret, illness, etc. which in practice will be assessed in the form of money, so that its fulfillment will be determined by the judge.

Meanwhile, the provision of compensation according to the Civil Code is as follows:

1. Compensation for all unlawful acts (article 1365);
2. Compensation for actions committed by other people (article 1367), which in article 1367 paragraph (1) says that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who become his dependents or caused by goods that are under his control (*vicarious liability*);
3. Compensation for animal owners (article 1368);
4. Compensation for the owner of the collapsed building (article 1369);
5. Compensation for the family left behind by the person killed (article 1370);
6. Replacement due to injuries or limb defects (article 1371);
7. Compensation for insulting acts (article 1372).

If an act has fulfilled these four elements, then the act is an act against the law.

Often, people cannot distinguish whether an act that causes harm to others is an act against the law or a breach of contract. However, in reality the two are very different. The thing that makes the determining point of an act a default or an act against the law fulfilling the previous four elements is whether or not there was an agreement between one party and another before the act

was committed. If prior to the action there was an agreement, then the act is a breach of contract. Acts against the law are carried out without an agreement that regulates the act beforehand.

Today, the procurement of insurance has become a common routine. For someone who has a job with a fairly high risk of loss, the procurement of insurance is very profitable. However, this then raises the possibility of new problems, namely the occurrence of unlawful acts in insurance. Acts against the law in insurance often occur, if the emergence of a third party. Often, a third party causes a loss to the insured, this then results in the insured party submitting an insurance claim according to the policy to the insurer. After all claims are fulfilled by the insurer, the insured's right of subrogation will automatically be transferred to the insurer.

The right of subrogation which is transferred to the insurer gives the insurer the right to collect compensation that has been caused to a third party that has caused a loss to the insured, and the compensation must be fulfilled, all of which are adjusted according to article 1365 of the Civil Code. However, in practice, it is often found that third parties do not fulfill the compensation. This then results in the third party having fulfilled the elements that make the act an unlawful act. Where this then gives rise to the right for the insurer to then sue the third party who caused the loss, in order to fulfill the compensation. In accordance with the example of PT Asuransi Jamkrindo as the credit guarantor of PT Bank Jateng Blora branch for the construction business loan of PT Lentera Emas Raya, in this case it was found that there was a legal defect in the loan application where the proposed project related to the loan was a fictitious project and then this problem an investigation has been carried out by the National Police Headquarters with a Police Report, while PT Bank Jateng Blora branch requested a claim from the insurance party but this was ignored due to an unlawful act committed by the debtor by falsifying project documents in the credit application requirements.

**The Insurance Party's Liability Against the Insured's Claims As the Insurance Policy Holder for the**

Insurer's Claims in general, is the party who accepts the transfer of risk where by receiving a premium, promises to compensate for the loss or pay an agreed amount of money, if an unexpected event occurs, which results in loss for the insured. Insurance agreements involving the insured and the insurer, in certain implementations have limitations between what must be fulfilled and carried out by each I'tikad, if so the insured and the insurer have obligations and responsibilities in the insurance agreement, especially if there is a claim submission made. by the insured to the insurer related to the things agreed in the insurance policy in the event of an uncertain event.

**Insurance Liability for those caused by the insured's fault**



In the provisions contained in Law No. 2 of 1992 concerning Insurance Business which was promulgated on February 11, 1992, it also provides a definition of insurance or coverage which is described here more broadly and completely than Article 246 of the Book The Commercial Law Act above, which is an agreement between two or more parties, by which the insurer binds himself to the insured, by receiving insurance premiums, to provide compensation to the insured due to loss, damage or loss of expected profits or legal liability to the insured. third parties that may be suffered by the insured, arising from an uncertain event, or providing a payment based on the death or life of an insured person (Rahmayani, 2018).

In an insurance agreement, basically there are several parties involved in the agreement, namely the insurer and the insured, while each party has rights and obligations in carrying out the agreement. rights and obligations that bind the insurer and the insured. The insurer is the party to whom the risk should be borne by the insured because he suffers a loss due to an unspecified event.

For the procedures and procedures for imposing administrative sanctions for the Insurance Company itself, it is carried out in stages, starting with administrative sanctions in the form of a written warning. The imposition of administrative sanctions in the form of a written warning is carried out at most 3 (three) times in a row for each violation. The period of application of administrative sanctions in the form of a written warning for each Insurance Company is no later than 30 (thirty) days after the implementation of the administrative sanctions (Salvasani & Kholil, 2020).

The Insurance Company will be subject to administrative sanctions in the form of restrictions on business activities if the Insurance Company is unable to overcome the violation which is the cause of the issuance of the last written warning sanction up to a predetermined period of time. This limitation of business activities can be for part or all of business activities. If with the imposition of sanctions on limiting business activities for all business activities but the Insurance Company is still unable to overcome the existing violations, then the heaviest sanction will be imposed, namely the revocation of the business license of the Insurance Company. This rule is in accordance with Article 6 of POJK Number 17/POJK.05/2017 concerning Procedures and Procedures for Imposing Administrative Sanctions in the Insurance Sector and Blocking Assets of Insurance Companies, Sharia Insurance Companies, Insurance Companies, and Sharia Reinsurance Companies (Salvasani & Kholil, 2020).

Crimes in insurance can also be committed by the insured. Many insureds follow the insurance for profit alone, even this is used as a job to earn a living, and many hospitals or doctors simply order a patient to be hospitalized even though the patient's illness is a mild disease and not severe. that do not require the patient to be treated. This is what provides opportunities for naughty insureds to seek benefits in insurance.



OJK as a financial supervisory agency in Indonesia also asks every insurance company to sue every suspicious rogue insured and it is suspected that his insurance claim contains elements that are not in accordance with the facts and/or cannot be verified, for example being prosecuted under Article 378 of the Criminal Code concerning Fraud (Santi et al., 2017).

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