



Legal reconstruction of fire insurance agreements on mortgaged buildings using the Indonesian standard fire insurance policy based on justice value

Gunarto*, Rois Harliyanto, Anis Mashdurohaturun

Faculty of Law Sultan Agung Islamic University, Semarang, Indonesia

Abstract

The purpose of this study is to examine and analyze the Fire Insurance Agreement Using the Indonesian Fire Insurance Standard Policy (PSAKI) on Building Object on Mortgage by examining its legal weaknesses and how to reconstruct the law in accordance with the justice value. The approach method used is socio-legal research. The type of legal research used is descriptive-analytical empirical. The approach applied to discuss the above problems is through a statute approach, a case approach, a historical approach, a comparative approach, and a conceptual approach.

The result of the study shows the Weaknesses in Fire Insurance Agreements Using the Indonesian Standard Fire Insurance Policy (PSAKI) for Building Objects Attached to Mortgages can be seen in the use of PSAKI policy, if the claim is not caused by the risks listed in the policy, the claim cannot be processed. The amount of compensation takes into account depreciation, while there is no clear regulation regarding the amount of depreciation means that it can lead to disputes between insurance companies and customers/debtors. Therefore, the Legal reconstruction of the Fire Insurance Agreements Using the Indonesian Fire Insurance Standard Policy (PSAKI) for Building Objects Attached to Mortgage Based Justice is in the form of a balance of rights and obligations between the insured and the insurer. The rights of the insured party, such as: a. The insured party has the right as a consumer not to become the object of business activity in reaping the maximum profit in accordance with Law No. 8 of 1999 concerning Consumer Protection, along with the obligations of the insured party, such as: The insured party has an obligation to pay premiums insurance to the insurer as regulated in Article 264 of the Indonesian Commercial Code.

Keywords: legal reconstruction, fire insurance, mortgage, justice value

Introduction

The insurance industry in Indonesia is not as popular as the banking industry in general. It is proven that not all people have adequate insurance products and some even do not have any insurance at all. One of the reasons is that people still do not understand the benefits of insurance and there is an image of how difficult the claim process and payment of compensation are (Purba, 1992) ^[5]. Meanwhile, the public or the business world who apply for credit to the bank either for the purchase of a house (KPR) or working capital are obliged to insure the buildings that are pledged as collateral to the Bank as a credit administration requirement.

The development of insurance companies cannot be separated from increasing public awareness and knowledge of the importance of insurance benefits. Education and technology are important factors in the growing public need for insurance. This is because people are trying to be more literate in financial literacy such as the vitality of paying premiums to use the benefits in the future, while what is developing in the community is an image that the filing of claims is a long and convoluted process so that insurance is slow to develop as well as the low level of people in insurance.

We can see the current phenomenon that the majority of people who are insurance literate are those who have higher education and have a contemporary lifestyle. Meanwhile, those belonging to the lower middle class still difficult to be invited to have insurance on the grounds of economic limitations or not yet requiring insurance to protect their assets. Even though the absence of insurance or coverage is

what will make it more difficult for them in the future (Sunarmi, 2012) ^[6].

Insurance should be in accordance with its designation when viewed from the aspects of Law, Economics, social, business and mathematics, it is very beneficial to the community, but in its development public awareness for insurance still requires education and socialization about the importance and benefits of insurance, especially in this case fire insurance. In the midst of society, there is a negative stigma that the insurance claim settlement process is convoluted and very difficult and the amount of compensation for losses suffered is not as expected. People ensuring their property is still just an achievement to carry out their credit agreement. In the process of the existence of an insurance agreement between the insurance company and the debtor, the involvement of the bank in the appointment of the insurance company and the guarantees and policies used is inseparable.

In connection with this, one of the disasters that often befalls the general public is fire. Fire disasters often occur in residential houses, residential areas, places of business, industrial buildings, and other buildings. Fire causes losses, both material and non-material losses, and can even take a person's life. Material losses include lost, scorched, or damaged property, physical buildings and facilities, and infrastructure. While non-material losses such as trauma and fear. Material losses as a result of the fire disaster resulted in financial losses that could affect human life, both individually and in society, including in the business world. The assets and buildings that we own, whether it's housing, offices, shops, warehouses, places of business, factories, and

other buildings, are not only objects that can be exposed to danger but are also investments with a high value, because it is very important to protect them from risks that may arise. can cause damage and destruction. Humans in their lives are inseparable from being exposed to danger or risk. This risk can befall the human person himself, such as an accident and/or his property that is in a fire. Risk is the possibility of loss that will be experienced, caused by a hazard that may occur, but it is not known in advance whether it will occur and when it will occur.

The insurance claim is a claim for loss submitted by the insured because the insured property is damaged or destroyed due to the occurrence of a risk. Insurance protection will be felt if the loss suffered is covered by both the process and its replacement according to the insured's expectations (Hutagalung, 2022) [2]. The process and settlement of the amount of compensation proposed by the insured certainly refer to the insurance agreement contained in the policy. The Indonesian Fire Insurance Standard Policy (PSAKI) which is used as a deed of insurance agreement between the company and the debtor, is not widely known as well as the basis for the process and compensation for compensation or a claim has not been provided as expected as a risk diversion and has not provided increased public awareness for insurance. For these things, the author intends to conduct a study titled "Legal Reconstruction of Fire Insurance Agreements on Mortgaged Buildings Using The Indonesian Standard Fire Insurance Policy Based On Justice Value" where the authors raise 2 (two) main issues as follows:

1. What are the weaknesses in the Fire Insurance Agreement Using the Indonesian Fire Insurance Standard Policy (PSAKI) for Mortgaged building objects?
2. How is the reconstruction of the Fire Insurance Agreement Using the Indonesian Fire Insurance Standard Policy (PSAKI) for Mortgaged building objects Based on Justice Value?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) [7].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010) [1]:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among

others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses in the Fire Insurance Agreement Using the Indonesian Fire Insurance Standard Policy (PSAKI) For Mortgaged Building Objects

Based on Article 5 of the General Terms of the Indonesian Fire Insurance Standard Policy, it is determined that in the event of a fire or damage to the insured object, the insured party has several obligations, namely:

- a. The Insured, after knowing or at the time it was deemed necessary to have known of any loss or damage to the property and or interest insured under this policy, must:
 1. Immediately notify the insurer
 2. Within 7 (seven) calendar days after paragraph (1.a) above, give written authority which contains the things that he knows about the loss or damage. The written statement must describe everything that was burned, destroyed, lost, damaged, and saved as well as the causes of the loss or damage that occurred.
 3. At the latest within 12 (twelve) months from the occurrence of loss and or damage, submit a claim for compensation to the insurer regarding the amount of the loss suffered.
- b. In the event of loss or damage, the insured must:
 1. As far as possible, save the insured property and or interest and allow other parties to save the property and or interest;
 2. Securing the insured property and or interest which is still valuable;
 3. Provide full assistance to the insurer or other party appointed by the insurer to conduct research on the loss or damage that occurred.

Judging from the obligations of the insured above, in principle, even though the goods have been insured, the insured party is still obliged to maintain and maintain the safety of the goods that have been insured.

In the event that the insured party demands a claim for the loss, then in order to obtain compensation based on Article 7 the general terms of the policy of the insured party in this case the debtor, report either to the Bank or to the insurance company directly. If the claim report has been received, the Insurer will submit a request for documents to process the claim or ask the insured to:

- a. Fill out the claim report form provided by the insurer and submit it to the insurer
- b. Submit a photocopy of the policy and submit a Minutes or Certificate of the loss event from the Village Head or Village Head or the local Police.

- c. Submit a detailed and complete report as possible about the matter which according to his knowledge caused the loss or damage
- d. Provide information and other relevant evidence, which is reasonable and appropriate to be requested by the insurer
- e. Submit a building repair offer made by 2 (two) contractors.
- f. Photocopy of proof of land ownership, IMB, and proof of PBB payment.

With the claim of the insured, the steps of the insurer based on the general provisions regarding the claim policy issued are:

- a. The insurer receives a claim report from the insured
- b. Receipt of the claim report is then followed up by the claims section
- c. The claims section will then examine the policy.

After the insurer obtains evidence that the insured is worthy of compensation, it is the responsibility of the insurer to provide compensation for the loss suffered by the insured, in accordance with the insurance agreement made and the sum insured.

Proof that the insurance agreement has actually been closed before the policy is issued, the insured party is usually given an Insurance Closing Newsletter or cover note and usually, the cover note itself has been printed beforehand. A cover Note or closing note is a temporary insurance closing document. Although not a policy from a legal point of view, the cover note has the same power as the policy in its position as proof of the agreement between the Insured and the Insurer. Generally, cover notes are issued to address the issue of the need for an insurance agreement document immediately.

The evidence that is used as the basis for claiming compensation without a policy is written evidence based on Article 258 of the KUHD. The evidence are:

- a. Certificate of Insurance Closure (cover note) given and signed by the insurer
- b. Application letter from the insured to enter into an insurance agreement that has been approved by the insurer
- c. Other proof of receipt from the insurer.

After the insured party can prove that the insurance agreement is truly closed and the insured suffers a loss due to the event, then the insurer pays compensation for all losses suffered by the insured.

Then, In the event of a fire or damage to the insured object and the parties have agreed on the amount of the loss, then the people who are entitled or can receive the insurance money are:

- a. The insured party who can prove that the insurance agreement has really been closed and has an interest in the goods insured
- b. The heirs of the insured party who have the approval of the insurer
- c. The legal consequences if the insured object has been sold by the insured, while the fire insurance agreement is still running.

According to the provisions of Article 251 of the KUHD, it has an important meaning after an event that causes a loss

occurs, so that it becomes a reason for the insurer to avoid the obligation to pay compensation. However, for the honest insured, it is a disappointment because he does not receive compensation on the grounds that the insurance is void, even though he has tried to provide insurance with the intention of avoiding risk. The protection provided by the legislators to the insurer through Article 251 of the KUHD is too excessive, so it is not impossible for the provisions of the article to be used as a weapon by the insurer to hit an insured who is honest or has good intentions, because the insurer is not obliged to reprimand or give the warning to avoid things cause of cancellation. (Zulkifli, 2022) ^[10]

According to Dorhout Mees, in Neary (1998) an objection against the cancellation in Article 251 of the KUHD is as follows:

- a. Cancellations cannot be corrected by the insured even if he wants to correct his mistakes.
- b. Cancellation is a punishment that is too severe for the insured who has good intentions, moreover, the improper notification has nothing to do with the loss.
- c. The notification that should have been made by the insured after making the insurance cannot be included in the provisions of Article 251 of the KUHD because the situation has changed.

The provisions of Article 257 of the KUHD the insurance agreement exists immediately after it is made; rights from then on, even before the Policy was signed. and the obligations of both parties from the insurer and from the insured run. Procurement of the agreement carries the obligation of the insurer to sign the policy within the specified time and hand it over to the insured.

The provisions of Chapter I of the Indonesian Fire Insurance Standard Policy, cover fires caused by carelessness or fault of the Insured or other parties, or due to other causes of fire as long as they are not excluded in the Policy. Caused by: The spread of fire or heat that arises by itself or because of the nature of the item itself; short circuit; Fires that occur due to fires of other objects in the vicinity provided that the fires of other objects are not the result of risks excluded by the Policy.

This includes loss or damage as a result of water and/or other tools used to contain or extinguish fires and/or the destruction of all or part of the property and/or interest insured by the competent authority in an effort to prevent the spread of fire.

The Insured is obliged to disclose material facts, namely information, information, circumstances, and facts that influence the Insurer's considerations in accepting or rejecting an application for insurance coverage and in determining the premium rate if the application is accepted; Make true statements regarding matters relating to insurance coverage; Delivered both at the time of making the insurance agreement and during the period of coverage.

If the Insured does not carry out the obligations as stipulated in paragraph (1.1.) above, the Insurer is not obliged to pay for the loss incurred and has the right to terminate the coverage and is not obliged to return the premium. The provisions in paragraph (1.2.) above do not apply in the event that the undisclosed or incorrectly stated material facts have been known by the Insurer, but the Insurer does not exercise his right to terminate the coverage within 30 (thirty) days after the Insurer becomes aware of the violation.

Weaknesses in the Process of a Fire Insurance Agreement Using a PSAKI Policy on Building Objects Attached to the Current Mortgage. When using the PSAKI policy, if the claim is not caused by the risks listed in the policy, the claim cannot be processed. The amount of compensation also takes into account depreciation, while there is no clear regulation regarding the amount of depreciation that it can lead to disputes between insurance companies and customers/debtors (Wahyu, 2018) ^[8]. The method used is the calculation of compensation using Indemnity (actual cost value). The existence of a deduction in the form of depreciation will reduce the amount of loss that will be received by the insured so the insured will need sufficient own costs to rebuild the damaged building. The existence of depreciation causes the non-fulfillment of insurance benefits as a risk transfer institution so it will become a negative stigma to insurance institutions, Weakening the public realization of the importance of insurance.

2. Reconstruction of the Fire Insurance Agreement Using the Indonesian Fire Insurance Standard Policy (PSAKI) For Mortgaged Building Objects Based on Justice Value

In the settlement of claims for compensation, 3 (three) conditions may occur, namely: The claim for compensation is approved by the Insurer; The claim for compensation is rejected by the Insurer, and the claim for compensation is approved at the discretion of the Insurer (ex-gratia)

In the event that the claim for compensation is approved by the Insurer, it must meet all of the following requirements (Muhaimin, 2019) ^[3]:

- a. The nature, form, and calamity that causes loss of the insured object are guaranteed by the terms and conditions of the Policy;
- b. The data contained in the compensation claim document is in accordance with the data contained in the SPPA;
- c. There is no evidence of an element of intent on the part of the Insured in the disaster that caused the loss.

If the four elements of the requirements above are met, then the claim for compensation can be declared valid and the Insurer will notify the Insured of the calculation of the amount of compensation. On the other hand, if one of the four conditions is not met, the Insurer may reject the claim for compensation.

Sometimes, technically the claim for compensation should be rejected by the Insurer, but based on certain considerations, for example, to maintain good relations with the Insured and others, the claim for compensation can be settled at the discretion of the Insurer (ex-gratia). Settlement of compensation claims on an ex-gratia basis is compensation for losses carried out deviating from the provisions of the terms and conditions of the Policy, which if paid can have a positive impact and benefit the Insurer. The considerations that are usually submitted for the settlement of claims for compensation ex-gratia include: Data on insurance premiums that have been received by the Insurer from the Insured; Insured loss experience data (loss record); Prospects of the Insured concerned.

At this stage the Insured has the right to refuse or object to the amount of compensation submitted by the Insurer. Only the refusal or objection must be accompanied by reasons and or sufficient evidence.

It should be stated here that generally the amount of loss incurred is greater than the total cost incurred by the Insured to repair the damage and the amount of insurance compensation paid by the Insurer will generally be even smaller. This is due to costs and or losses that are not guaranteed (excluded) in the Policy. For example, the cost of cleaning debris, demolition costs, consequential loss, theft, and loss during and after the accident, as well as other factors that may limit the amount of compensation for the Insured as will be discussed in the section next. Thus, at this stage, it is often necessary to meet several times between the Insured and the Insurer and/or Loss Adjuster to reach an agreement on the amount of compensation.

Based on this, the Reconstruction of the Fire Insurance Agreements on Mortgaged Buildings Using the Indonesian Standard Fire Insurance Policy Based On Justice Value is in the form of a balance of rights and obligations between the insured and the insurer. That the insurer has rights, such as: The insurer has the right to demand payment of premiums to the insured in accordance with the agreement. Obligations owned by the insurer such as: The insurer has an obligation to provide compensation or provide a sum of money to the insured party if the agreed event occurs unless there is something that can be a reason to release from the obligation (Wahyu, 2019) ^[9]. One-third of the rights are owned by the insured. The insured party has the right to get an explanation regarding the terms and conditions of the policy as well as the right to get a premium discount so that it can reduce the burden of paying the insured premium. Obligations owned by the insured, such as: The insured party has an obligation to pay insurance premiums to the insurer. As regulated in Article 264 of the Commercial Code.

By attaching the Reinstatement Value Clause the Insured/debtor is entitled to a new replacement value for the building/property that has suffered loss or damage without deductions for depreciation or depreciation and is not subject to additional premiums for the Reinstatement Value Clause aka free of charge. All that needs to be done is to adjust the insurance price with new prices.

Conclusion

Based on the results of the research, the following conclusions can be drawn:

1. The Weaknesses in the Fire Insurance Agreement Using the Indonesian Standard Fire Insurance Policy (PSAKI) for Mortgaged Building Objects can be seen during the use of the PSAKI policy, if the claim is not caused by the risks listed in the policy, the claim cannot be processed. The amount of compensation takes into account depreciation, while there is no clear regulation regarding the amount of depreciation means that it can lead to disputes between insurance companies and customers/debtors. The method used is the calculation of compensation using Indemnity (actual cost value). The existence of a deduction in the form of depreciation will reduce the amount of loss that will be received by the insured so that the insured will need sufficient own costs to rebuild the damaged building. The existence of depreciation causes the non-fulfillment of insurance benefits as a risk transfer institution so it will become a negative stigma to insurance institutions. Weakening the public to realize the importance of insurance.

2. The Legal Reconstruction of the Fire Insurance Agreements Using the Indonesian Fire Insurance Standard Policy (PSAKI) for Mortgaged Building Objects Based on the Justice Value is in the form of a balance of rights and obligations between the insured and the insurer. That the insurer has rights, such as: The insurer has the right to demand payment of premiums to the insured in accordance with the agreement. Obligations owned by the insurer such as: The insurer has an obligation to provide compensation or provide a sum of money to the insured party if the agreed event occurs unless there is something that can be a reason to release from the obligation. The rights of the insured party, such as: a. The insured party has the right to get an explanation regarding the terms and conditions of the policy as well as the right to get a premium discount so that it can reduce the burden of paying the insured premium. Obligations owned by the insured, such as: The insured party has an obligation to pay insurance premiums to the insurer. As regulated in Article 264 of the Indonesian Commercial Code.

Marine. Legal Standing: Jurnal Ilmu Hukum,2022:6:98. 10.24269/ls.v6i1.5040.

References

1. Faisal. Menerobos Positivisme Hukum. Rangkang Education, Yogyakarta, 2010, 56.
2. Hutagalung M. Suatu Kajian Tentang Asuransi Kebakaran Dan Pelaksanaan Ganti Rugi (Klaim) Asuransi Kebakaran Pada Tertanggung Di PT. Asuransi Inda Tamporok Cabang Medan, 2022.
3. Muhaimin Abdul. Tinjauan Hukum Islam Tentang Asuransi. Mizan: Journal of Islamic Law,2019:3:71. 10.32507/mizan.v3i1.434.
4. Neary M, Taylor G. From the Law of Insurance to the Law of Lottery: An Exploration of the Changing Composition of the British State. Capital & Class,1998:22(2):55-72. <https://doi.org/10.1177/030981689806500106>
5. Radiks Purba. Memahami Asuransi di Indonesia, Seri Umum No.10, Pustaka Binaman Pressindo, Jakarta, 1992, 10.
6. Sunarmi. Pemegang Polis Asuransi dan Kedudukan Hukumnya, Jurnal Ilmu Hukum, 2012, 3(1). <http://dx.doi.org/10.30652/jih.v2i02.1139>
7. Toebagus Galang Winda Pratama. The Urgency for Implementing Cryptomnesia on Indonesian Copyright Law, Saudi Journal of Humanities and Social Sciences,2020:5(10):508-514, DOI: 10.36348/sjhss.2020.v05i10.001
8. Wahyu Widodo, Sapto Budoyo, Toebagus Galang Winda Pratama. The Role of Law Politics on Creating Good Governance and Clean Governance For A Free-Corruption Indonesia In 2030. The Social Sciences,2018:13:1307-1311.
9. Wahyu Widodo, Toebagus Galang. Poverty, Evictions and Development: Efforts to Build Social Welfare Through The Concept Of Welfare State In Indonesia, 3rd International Conference On Globalization Of Law And Local Wisdom (Icglow 2019), 2019. [Dx.Doi.Org/10.2991/Icglow-19.2019.65](https://doi.org/10.2991/Icglow-19.2019.65)
10. Zulkifli, Suhaila & Stefanie, Stefanie & Philip, Margareth & Purba, Josua. Analisis Yuridis Terhadap Penerapan Prinsip Indemnity Dan Insurable Interest Pada Asuransi Kebakaran Di Pt. Asuransi Tokio