



The concept of fisheries insurance in risk transfer effort for pond farmers

Fries Melia Salviana, Desy Nurkristia Tejawati, Shanti Wulandari

Faculty of Law, Wijaya Kusuma Surabaya University, Surabaya, Indonesia

Abstract

Fish Cultivators and Salt Farmer, hereinafter referred to as Permen KP No.18/2016. At Permen KP No.18/2016 contains the Fisheries Insurance Program for Small Fish Cultivators (APPIK). This program, in addition to providing protection, is an education to foster awareness for fish farmers of the importance of insurance. This will of course, will also increase the motivation and work passion of fish farmers and increase the trust of banks to provide capital assistance to fish farmers. Banks to provide capital assistance for their business loans. The problem is the lack of socialization to fish farmers and the number of fish farmers who object to this feel objected to this. For this reason, there is a formulation of problems regarding the characteristics of fisheries insurance in risk transfer efforts for pond farmers and the concept of the implementation of fisheries insurance in risk transfer efforts for pond farmers. The purpose of this research is to analyze the purpose of this study is to analyze characteristics of fisheries insurance in an effort to transfer the risk for pond farmers and analyze the concept of the implementation of fisheries insurance in an effort to transfer the risk for pond farmers. This research method is normative research with a statutory approach and concept approach. The characteristics of fisheries insurance basically have similarities with livestock insurance and agricultural insurance, and are included in loss insurance. Basically, it is a transfer of risk to the loss of pond farmers due to the death of fish, whether caused by natural disasters, diseases, or waste from surrounding factories. Fisheries insurance can be said to be a social insurance which is a government program implemented by the local government, so that government intervention in the implementation of fisheries insurance needs to be implemented both at the time of the start of the insurance agreement until the time of compensation due to the occurrence of the event as well as the benefits that can be given to pond farmers if during the insurance period there is no event.

Keywords: Fisheries insurance; risk transfer; pond farmers

Introduction

Humans are creatures that have many needs that must be met, but not all of these needs can be met properly, because sometimes there is an event that will occur and cause the event to not be fulfilled. This possibility is called risk^[1]. One form of risk faced by humans is the loss of profit from what they do, especially if it happens because of something unexpected. One of the ways that can be used to overcome risk is by transferring the risk to another party who is willing to take over the risk, the party is an insurance company. The insurance company is willing to accept the transfer of risk on the condition that there is a provision of a sum of money in the form of premium payments^[2].

Article 1 point 3 of Government Regulation No. 50/2015 on the Empowerment of Small Fishermen and Small Fish Farmers, hereinafter referred to as Government Regulation No. 50/2015, states that a small fish farmer is a person whose livelihood is to cultivate fish to fulfill their daily needs. So it can be concluded that small fish farmers carry out small fish farming with the desire to make a profit. However, it is possible that in the future the profit will not be obtained due to an event, one of which is a natural disaster or disease outbreak.

Law No. 7/2016 on the Protection of Fishermen, Fish Cultivators and Salt Ponds, hereinafter referred to as Law No.7/2016, regulates the protection of small fish farmers. The Ministry of Maritime Affairs and Fisheries (KKP) then implements the mandate contained in Law No.7/2016 by issuing Minister of Maritime Affairs and Fisheries Regulation (Permen KP) Number 18 of 2016 concerning Risk Protection Guarantees to Fishermen, Fish Cultivators and Salt Farmers, hereinafter referred to as Permen KP

No.18/2016. In Permen KP No.18/2016 there is a Fisheries Insurance Program for Small Fish Cultivators (APPIK). Thus, it can be underlined that the risk of losses suffered by small fish farmers will be transferred to the insurance company.

The purpose of the program is to reduce the losses suffered by small fish farmers and to educate fish farmers on the importance of insurance. It will also increase the motivation and passion of fish farmers and increase the trust of banks to provide capital assistance for their business loans.

This program, like any other insurance agreement, requires a premium as a condition for the insurance company's obligation to provide compensation in the event of a loss. For this reason, small fish farmers as the insured must make premium payments to the insurance company. This insurance premium for one year of implementation will receive assistance from the Ministry of Maritime Affairs and Fisheries. Furthermore, small fish farmers who want to continue insurance protection can pay independently, but still get support from the Regional Revenue and Expenditure Budget, hereinafter referred to as APBD. The cost of fisheries insurance premiums for small fish farmers starts at Rp. 140,000. Meanwhile, self-insurance for large fish farmers will be charged a premium of Rp. 5,000, Rp. 100,000, and Rp. 175,000, each of which has a different claim value.

Fisheries insurance is a good and positive step from the government that must be supported by all parties. This program can increase the enthusiasm of fish farmers in working. However, in its implementation, there are several problems that occur. The problem is the lack of socialization to fish farmers and the number of fish farmers who object to

this. For this reason, there are the following problem formulations; first, it is about the Characteristics of Fisheries Insurance in Risk Transfer Efforts for Pond Farmers, second it is about the Concept of Implementation of Fisheries Insurance in Risk Transfer Efforts for Pond Farmers.

The approach used in this research are statute approach and conceptual approach. The statute approach is carried out by examining all laws and regulations related to the legal issues handled, while the conceptual approach is used to conduct additional analysis related to legal issues, especially to strengthen the analysis using the statute approach^[3].

The analysis used is systematic interpretation, which analyzes all existing laws and regulations as well as theories and concepts found, both to find out the terms used in the laws and regulations conceptually, and to find out their application in practice^[4].

Characteristics of fisheries insurance in risk transfer efforts for Farmers pond

Agreement according to Article 1313 of the Civil Code, hereinafter referred to as the Civil Code, is an act by which one or more people bind themselves to one or more other people. According to Subekti, an agreement is an event in which one person promises to another or in which the two people promise each other to carry out a matter^[5].

Article 246 of the Commercial Code, hereinafter referred to as the KUHD, states that insurance is an agreement by which the insurer binds himself to the insured by accepting a premium to compensate him for loss, damage or loss of expected profits that may be suffered due to an unspecified event, therefore, the elements of the insurance agreement can be described as follows:

1. The Parties

The subject of insurance is the parties to the insurance, namely the insurer and the insured. The insurer is the party who binds himself to the insured by obtaining a premium, to provide compensation for loss, damage, or loss of expected profits, which may be suffered due to an uncertain event. The definition of an insurer according to Article 1 number 15 of Law Number 40 of 2014 is that an insurance company is an insurance service business or risk management, risk reinsurance, product marketing and distribution, insurance or sharia insurance products, consulting, insurance brokering, sharia insurance, reinsurance, or sharia insurance as well as insurance loss assessment. The insurer is the party that provides compensation. In fisheries insurance, the insurer is an insurance company that provides compensation if an uncertain event occurs to the insured, who is a small fish farmer.

2. Status of the parties

The insurer must be a legal entity, which can be in the form of a limited liability company, a joint stock company (persero) or a cooperative. The insured can be an individual, partnership, or legal entity, either as a company or not a company. The insured is the owner or interested party of the insured property, in this fisheries insurance is the owner of the pond^[6].

3. Object of insurance

Objects can be objects, rights, or interests attached to objects, and a sum of money called a premium or compensation. In the object of insurance there are goals that

the parties want to achieve. The insurer aims to obtain payment of a number of premiums in exchange for the transfer of risk. The insured aims to be free from risk and obtain compensation if there is a loss to his property. Article 1 point 25 of Law No.40/2014 states that the object of insurance is body and soul, human health, legal liability, objects, and services, as well as all other interests that can be lost, damaged, lost, and/or reduced in value. In fisheries insurance, the object of insurance is fish and or living things cultivated in ponds^[7].

4. Insurance event

Insurance events are legal acts in the form of agreements regarding insurance objects, events that threaten insurance objects, and conditions that apply in insurance. The free agreement or agreement is made in written form in the form of a policy. This policy is the only evidence used to prove that insurance has occurred^[8].

The insurance relationship that occurs between the insurer and the insured is a relationship that arises because of free consent or agreement. The engagement is in the form of voluntary willingness of the insurer and the insured to fulfill their respective obligations and rights towards each other (reciprocally). This means that since the insurance agreement is reached, the insured is bound and obliged to pay insurance premiums to the insurer, and since then the insurer also accepts the transfer of risk^[9].

Risk transfer occurs because the insured realizes that there is a threat of danger to his property so that the insured transfers the risk of loss to the insurer and the insurer is willing to pay compensation for an event that results in the loss of the insured, starting with the payment of premiums by the insured. So it can be said that the premium is an indicator of the insurer's binding to be willing to pay compensation if the risk becomes a reality caused by an event or uncertain event. In fisheries insurance, the risk that may occur is the risk of death of fish and or any living creature cultivated in the pond, causing losses. The death can be caused by natural disasters and or waste.

Subekti states that the legal relationship that arises due to the principle of consensualism where since the free agreement is reached, the agreement is valid^[10].

The event of the transfer of risk from the insured to the insurer is what is called an insurance event, so that the insurance event can be said to be a legal event in the form of an agreement or agreement regarding the object of insurance, the event that threatens the insurance object, and the conditions that apply in insurance. This legal action gives rise to a legal relationship, namely a relationship between the insurer and the insured to fulfill their respective rights and obligations reciprocally, so that after an agreement and starting with the payment of premiums by the insured, the insurer is obliged to accept the transfer of risk and pay compensation in accordance with the agreement if an event occurs.

The event of the transfer of risk from the insured to the insurer is what is called an insurance event, so that the insurance event can be said to be a legal event in the form of an agreement or agreement regarding the object of insurance, the event that threatens the insurance object, and the conditions that apply in insurance. This legal action gives rise to a legal relationship, namely an association between the insurer and the insured to fulfill the rights and obligations of each reciprocally, so that after an agreement

and preceded by the payment of premiums by the insured, the insurer is obliged to accept the transfer of risk and pay compensation in accordance with the agreement if an event occurs. In fisheries insurance, the insurance event is born when the owner of the pond makes an insurance agreement with the insurer, namely the insurance company.

The legal relationship that arises between the insurer and the insured is due to the existence of a fisheries insurance policy. The legal relationship results in the emergence of rights and obligations for the insured and the insurer.

Free agreement is reflected in Article 1320 paragraph 1 of the Civil Code which implies that the insurers declare their respective wills to close an agreement or the statement of one party is suitable or in accordance with the statement of the other party. This agreement is formed with two elements, namely the offer and acceptance which are the basis for the attachment of the agreement. Niewenhuis argues that the open will and the trust that is generated are important for the parties in fulfilling their respective obligations and rights towards each other reciprocally^[11].

The approval of the will has an important implication regarding the withdrawal of risk, the opportunity to withdraw the offer, when the expiration period is calculated, and determining the place of the agreement^[12]. The event of fisheries insurance is preceded by a series of acts of offer and acceptance carried out by the insured and the insurer reciprocally. This series of actions is carried out in order to obtain approval of the will. The insurer is the party who accepts the risk of a unit link-based life insurance agreement, who bears the payment of compensation and binds himself to the payment of that amount^[13]. From the definition of the insurer, there are two obligations of the insurer of fisheries insurance, namely the obligation to submit the policy and to pay compensation to the insured.

Article 255 of the KUHD stipulates that coverage must be made in writing in a policy. In an insurance agreement, the policy is not evidence of an agreement that appears in the provisions of Article 257 of the KUHD, but that does not mean that the policy is not important because the policy still has a great meaning for the insured because the policy is perfect evidence of what is agreed by the parties to the insurance agreement.

Article 246 of the KUHD mentions the insured as the party who must pay the premium to the insurer. The obligations of the insured are:

1. The obligation to pay the premium is the most important obligation because the running or not of the insurance law is determined by the premium;
2. The obligation to provide information is carried out before the first premium is paid. This obligation is imposed on the insured as a measure for the insurer to calculate the severity of the risk. Providing this information is done by the insured by filling out the form provided by the insurer.

While the rights of the insured are:

1. Demand the submission of the policy

The policy is an important evidence in the insurance agreement because the policy contains all insured interests regarding the rights and obligations of the insured and the insurer. In practice, the insurer makes the policy, so the insured should have the right to demand that the policy be handed over to him within 24 hours. The basis of this right is Article 257 paragraph 2 of the KUHD, while the time

period for delivery is regulated in Article 259 and Article 260 of the KUHD.

2. Claiming compensation

In the event of an uncertain event that results in losses to the interests in the coverage, the insured party can claim his rights, namely asking for compensation from the insurer.

Several things that cause fisheries insurance, namely^[14]:

1. The occurrence of an event
2. The time period ends
3. Insurance is canceled

Fisheries insurance promises the transfer of risk, loss for the death of fish and or living creatures cultivated in the pond, so that the rights and obligations of the insured are not only related to the payment of premiums and compensation and the end of the event but also have a connection with the delivery of compensation to the insured.

Fisheries insurance also has a time period. If the period ends without an event occurring, the insurer's burden ends, but the agreement stipulates that the insurer will return the sum insured to the insured, for example, within 5 years no event occurs, then the sum insured will be returned.

Cancellation of insurance before the insured period is due to the insured not continuing to pay premiums in accordance with the agreement or due to the insured's own request. Cancellation of fisheries insurance can occur before the premium begins to be paid or after the premium is paid according to the term. The arrangement is adjusted to the agreement made by both parties.

Concept of implementation of fisheries insurance in risk transfer efforts for pond farmers

Fisheries insurance policy is a standard agreement. The agreement is made based on a free agreement between two parties who are capable of performing legal acts aimed at carrying out the achievements agreed in the contract, which are not contrary to law, public order, and decency. However, often the position of the two parties in a negotiation is not balanced, resulting in a contract that is more favorable to one party only. A standard agreement according to Sutan Remy Sjahdeini is an agreement in which almost all clauses have been standardized by the user and the other party basically has no opportunity to negotiate or request changes^[15].

There are 5 characteristics of a standard agreement, namely^[16]:

1. The contents are determined unilaterally by the party whose position (economy) is strong. In making a standard agreement, it is only determined by one party, and usually, the party who makes it is the party whose position is relatively strong. This is intended so that parties in a weak position are willing or subject to all the provisions of the standard agreement. The contents of the agreement are standard clauses which are provisions or conditions made by one of the parties and desired by the company which are poured into an agreement document that is binding and must be fulfilled by consumers. This causes consumers to be in a weak position because they have to follow everything that a company has determined, therefore consumers must be protected by applicable laws and regulations;
2. The community (debtor) has absolutely no role in determining the contents of the agreement. Every

content of the agreement that has been determined by the business actor is prohibited from including standard clauses whose location or shape is difficult to see or cannot be read clearly or whose disclosure is difficult to understand by other parties and every business actor is prohibited from making incorrect or misleading statements regarding the contents of the Agreement, so that in this case every content of the agreement made by the business actor even though it is made unilaterally must also pay attention to the rights of the community (debtor) who will sign an agreement;

3. Driven by his needs, the debtor is forced to accept the agreement. The more rapid human development at this time, the more needs the debtor has to fulfill.

Standard agreements contain weaknesses because the terms are determined unilaterally and the other party is forced to accept the situation because of its weak position. These weaknesses are expressed by Pitlo, among others, that this standard agreement is a null and void because it violates the freedom of the parties guaranteed by Article 1338 paragraph 1 of the Civil Code. This is because the weaker party cannot do anything but agree to the contents of the standard agreement made by the stronger party.

Since fisheries insurance also uses a standard policy that is made unilaterally, to avoid any misuse by insurance companies, there is a standard fisheries insurance policy issued by the Indonesian General Insurance Association. So that later insurance companies making policies may not deviate from the standard policy coupled with the existence of prior examination by the Financial Services Authority so that the clauses contained in fisheries insurance do not harm small fish farmers.

Loss insurance, which is included in general insurance, is insurance that has the aim of providing compensation or income after getting a disaster. The element is only the protection of interests. Natural disasters including Floods, landslides, eruptions, earthquakes, tsunamis, and hurricanes, and/or Fish disease outbreaks can cause fish farmers to lose income because their fish farming business experiences losses reach $\geq 50\%$ (fifty percent) due to the loss or damage of fish farming facilities^[17]. These risks can be transferred with fisheries insurance.

Fisherman insurance arrangements are contained in Law Number 7 Year 2016 concerning Guarantees for Risks to Fishermen, Fish Cultivators, and Salt Farmers. There are two types of fishermen's insurance, namely subsidized fishermen insurance and independent fishermen insurance. The difference between subsidized fisheries insurance and independent fisheries insurance is that in the first year of insurance registration, small fish farmers receive free subsidized premium assistance from the Government, and if small fish farmers want to continue fisheries insurance in the following year, small fish farmers must participate in fisheries insurance independently. Self-insurance is fisheries insurance coverage where the premium is fully paid by the small fish farmer^[18].

Fisheries insurance subsidized by the government is insurance that is assisted in advance for premium payments. Article 1 Regulation of the Minister of Maritime Affairs and Fisheries Number 19 of 2023 concerning the Distribution of Government Assistance within the Ministry of Maritime Affairs and Fisheries states that government assistance is assistance that does not fulfill the criteria for social

assistance provided by Government to individuals, community groups, or government/non-government institutions, one of which is the payment of fisheries insurance premiums as referred to in Article 2 paragraph (2) letter 1.

In Article 2 paragraph (2) letter b is given in the form of money as contained in Article 9 of the Minister of Maritime Affairs and Fisheries Regulation Number 19 of 2023 concerning the Distribution of Government Assistance within the Ministry of Maritime Affairs and Fisheries. Assistance in paying fisheries insurance premiums as referred to in paragraph (1) is given to small fish farmers with the condition that they have an electronic Kusuka (e-Kusuka); and active participants in the National Health Insurance program with the condition that they are registered in the national health insurance program, with the condition and or registered in one data page.

Fisheries insurance agreements on premiums that get assistance from the government are usually implemented with socialization from the government and are suggestions from the government, so usually the government is the policyholder because the government also carries out cooperation with trusted insurance companies. As a result, small fish farmers cannot find their own fisheries insurance company. For this reason, as legal protection for small fish farmers, the government, which is usually initiated by the Maritime Affairs and Fisheries Agency, to see and examine the draft policy that will be used in fisheries insurance (after having previously gone through approval from the Financial Services Authority).

Fisheries insurance which receives subsidies from the government also usually does not provide policies to small fish farmers and the one that holds it is the Maritime Affairs and Fisheries Service. Even though the police are strong evidence. Therefore, the Maritime Affairs and Fisheries Service must provide its policy to small fish farmers. This is as stated in article 257 of the KUHD states that the insurance agreement exists as soon as it is made; the rights begin at that time, even before the policy is signed. Even before the Policy is signed. And the obligations of both parties the insurer and the insured.

Article 258 of the KUHD, namely To prove the existence of the agreement, there must be written evidence so that if a dispute arises about it in the time between the procurement of the agreement and the delivery of the policy, it can be proven that there is a need for written evidence. However, with the understanding that it must be evident in writing the conditions whose statements are expressly required in the policy, with the threat of punishment being canceled, in various coverage by statutory provisions. Therefore, the Department of Marine Affairs and Fisheries as the policyholder should also provide a policy to small fish farmers as the insured of fisheries insurance.

Another thing that must also be considered is related to the provision of compensation to small fish farmers. The concept of compensation that should fulfill the principle of indemnity as contained in Article 253 of the KUHD.

Article 253 of the KUHD states that the insured value must be at the amount of its value. Meanwhile, in the event that the value of the goods is not fully insured, the insurer, in the event of loss, is only bound according to the balance between the insured and uninsured parts.[19] However, the covenantee is free to expressly stipulate that regardless of the excess value of the insured item, the loss suffered by the

item will be compensated up to the full amount insured ^[20]. This is so that the compensation provided will be in accordance with the losses suffered by small fish farmers. The main principle of indemnitas is the insured only gets compensation according to the losses the insurer bears without making a profit. Compensation from the insurer depends on the information provided by the insured ^[21]. Thus, the insured must provide correct information that will be included in the insurance policy as an implementation of the principle of good faith. This initial information is submitted in an Application for Insurance Closure, which will be used as the basis for making a policy. One important aspect of the policy is the date of sailing. However, even though it has been stated regarding the ship's sailing date, it still needs to consider the possibility of the insured changing the sailing date for several reasons. Some of the reasons that are often encountered, for example weather factors, factors related to loading and unloading of goods, have just been issued or the ship does not have a sailing license, or other factors.

Conclusion

Fisheries Insurance is an important thing to do related to losses that occur to pond farmers. However, it cannot be denied that there are some shortcomings in its implementation. Both related to the reluctance of insurance companies to make payments in the event of a loss as well as premiums that are considered by farmers to be too high. Therefore, the importance of applying the principle of indemnity, which is related to the equalization of profits and losses that must be borne by both parties, both farmers and insurance companies. For this reason, the agreement of both parties is very necessary.

References

1. Man S Sastrawidjaja. *Hukum Asuransi: Perlindungan Tertanggung, Asuransi Deposito, usaha Perasuransian* (Bandung: M Alumni, 2013).
2. Emmy Pangaribuan Simanjuntak. *Hukum Pertanggung dan Perkembangan* (Yogyakarta: Universitas Gajah Mada, 2001).
3. Peter Mahmud Marzuki. *Penelitian Hukum* (Jakarta: Kencana, 2016).
4. Soerjono Soekanto. *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia, 2014).
5. R Subekti. *Hukum Perjanjian* (Jakarta: Intermedia, 2010).
6. Wirjono Prodjodikoro. *Hukum Asuransi Di Indonesia* (Jakarta: PT. Intermedia, 2017).
7. Wirjono Prodjodikoro. *Hukum Asuransi Di Indonesia* (Jakarta: PT. Intermedia, 2017).
8. Abdulkadir Muhammad. *Hukum Asuransi Indonesia, Cetakan Ke* (Bandung: PT. Citra Aditya Bhakti, 2011).
9. Abdulkadir Muhammad. *Hukum Asuransi Indonesia, Cetakan Ke* (Bandung: PT. Citra Aditya Bhakti, 2011).
10. R Subekti. *Hukum Perjanjian* (Jakarta: Intermedia, 2010).
11. Kun Wahyu Wardana. *Hukum Asuransi, Proteksi Kecelakaan Transportasi, cetakan Ke* (Bandung: Mandar Maju, 2009).
12. Agus Yudha Hernoko. *Hukum Perjanjian, Asas Proporsional Dalam Kontrak Komersial, cetakan Ke* (Jakarta: Kencana, 2021).
13. Santoso Poejosoebroto. *Beberapa Aspek Tentang Hukum Pertanggung Jiwa Di Indonesia* (Jakarta: Bharata, 2007).
14. Abdulkadir Muhammad. *Hukum Asuransi Indonesia, Cetakan Ke* (Bandung: PT. Citra Aditya Bhakti, 2011).
15. Sutan Remy Sjahdeini. *Kebebasan Berkontrak Dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank Di Indonesia, 2nd ed.* (Jakarta: Pustaka Utama Grafiti, 2009).
16. Mariam Darul Badruzaman. *Kompilasi Hukum Perikatan* (Bandung: PT. Citra Aditya Bhakti, 2001).
17. Sari. "Asuransi Nelayan Untuk Meningkatkan Kesejahteraan Sosial Nelayan," *Jurnal Ponggawa*, 2022:2(2):91–103.
18. Devi Satria. "Pelaksanaan perjanjian asuransi nelayan kecil di kabupaten bengkalis pada pt asuransi jasindo cabang pekanbaru", 2019:6(2):31–23.
19. Dimas Aulia. "Insurance Construction Services in Infrastructure Development," *Yuridika*, 2020:35(2):465.
20. Fadhly Wicaksono. "Hukum Aspek Pengiriman Barang Oleh Perusahaan Jasa Ekspedisi Dan Cargo Melalui Pengangkutan Laut," *JuriscDiction*, 2020:3(5):1700.
21. Angela; Anugerah. "Legality of Marine Cargo Insurance Claim With Different Sailing Date on Policy (Analysis of Decisions Number 589/PDT.G/2012/PN.J KT.SEL)," *Yuridika*, 2023:38(3):465.