

Claim Implementation of Accident Insurance Agreement for Ship Passengers as Users of Sea Transport Services

Fadlan

Faculty of Law, University of Batam

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ABSTRACT

Insurance agreements for accidents at sea for passengers of ships are outlined in Article 3 of Law Number 2 of 1992 concerning the Insurance Business. The implementation involves fulfilling the rights and obligations of the parties involved in the insurance agreement, particularly for ship passengers. This includes making premium payments based on the risks and accidents encountered. However, there are certain obstacles and conditions that may arise in fulfilling these rights and obligations. These include delays or non-compliance with the stipulated provisions, reporting claims beyond the specified period mentioned in the policy, inability to provide necessary supporting documents for claims, failure to file a claim within 12 months of the incident, and demands exceeding the coverage stated in the policy.

Keywords: Accident Insurance Agreements, Sea Transportation Service

INTRODUCTION

Transportation plays a vital role in supporting the lives of the Indonesian people and is closely tied to the country's economy. The development of transportation in Indonesia is influenced by the mobility and interests of its people, driven by both economic and sociocultural factors (Gultom, 2007). Indonesia encompasses land, air, and sea territories, giving rise to three main types of transportation: land transportation, air transportation, and sea transportation. To achieve the national development goals, as

outlined in the implementation of Pancasila, transportation holds a substantial and strategic position in developing an environmentally sustainable nation. This must be reflected in the mobility needs of all sectors and regions (Soegijatna, 1995).

Indonesia has a sea area of 3,257,483 km², which accounts for 2/3 of the country's entire territory. This vast sea area makes sea transportation, primarily through ships, one of the primary modes of transportation in the era of globalization. According to Article 219 of Law Number 17 of 2008, any sea transportation (ship) engaged in shipping activities must possess a Sailing/Laying Approval Letter (SPB) issued by the harbor master, allowing it to sail or dock. Given Indonesia's geographical reality, it is essential to harness the potential of its waters, which are among its greatest assets, to support the realization of the Archipelagic Outlook. Utilizing the sea is crucial for the Indonesian people to ensure survival and foster national development. Therefore, it is imperative for Indonesia to possess sea power, which refers to the country's ability to leverage all the resources and opportunities provided by the sea to fulfill the people's interests and maximize their benefits (Roesli, 1988).

In sea transportation, ships play a crucial role as they are essential for transporting goods and passengers. Ships are designed to carry substantial loads and are equipped with necessary equipment and fittings. A ship can be defined as a watercraft with a

specific shape and type that is propelled by wind power, mechanical power, or other energy sources. It can be self-propelled, towed, or tow other vessels. This definition also includes vehicles with dynamic support, underwater vehicles, floating devices, and stationary floating structures (Purwosutjipto, 1985).

To establish an agreement between the carrier and the passenger, a ticket serves as proof of the agreement. This agreement sets forth regulations that form the basis of the contractual relationship, which is considered a unilateral agreement. Through this agreement, both the carrier and the passenger have rights and obligations that bind them legally. In the context of this discussion, the focus is on discussing the carrier's responsibilities concerning the goods being transported (Abdulkadir, 2013). Risk in insurance is generally understood as the potential of experiencing a loss due to an uncertain event at the time of obtaining the insurance. These events can be categorized as force majeure, which are beyond human control (such as earthquakes, tsunamis, etc.), errors committed by the insured, or actions of other individuals (Adji & Prakoso, 2007). Building upon this context, the researcher aims to investigate and delve into the implementation of accident insurance claim agreements for ship passengers who utilize sea transport services. In light of this background, the following research problems can be formulated

1. How is the Legal Arrangement of Accident insurance agreements at sea for ship passengers?
2. How is the implementation of an insurance claim agreement at sea for ship passengers?

METHODOLOGY

Related to the writing of this research, the author employs empirical or sociological legal research methods. This research relies on primary data, which refers to data obtained directly from the community as the

first-hand source through field research. Primary data is collected through field research methods such as observation, interviews, and questionnaire distribution. Sociological legal research can be conducted to assess the effectiveness of existing laws or to identify legal issues. Primary legal research cannot be carried out separately from normative legal research. Normative legal research typically involves library research or document study, as it primarily relies on secondary data sources found in the library. In normative research, secondary data sources may include primary, secondary, and tertiary sources.

DISCUSSION

Legal arrangements regarding accident insurance agreements at sea for ship passengers

Article 246 of the Indonesian Commercial Code outlines the essence of insurance or coverage as an agreement between an insurer and the insured. According to this article, the insurer undertakes the responsibility of safeguarding the insured against potential losses, damages, or expected profit shortfalls resulting from uncertain events. On the other hand, Article 1 point 1 of Law Number 2 of 1992 defines insurance as a comprehensive agreement involving multiple parties. In this agreement, the insurer receives an insurance premium in exchange for providing reimbursement to the insured party in the event of loss, damage, loss of expected benefits, or legal liabilities to third parties. This distinction between the Commercial Code and Law Number 2 of 1992 reveals a divergence in the concept of insurance. While the Commercial Code focuses solely on insurance for losses, Law Number 2 of 1992 encompasses a broader scope that includes life and liability insurance. Moreover, Law Number 2 of 1992 specifies that the object of insurance can encompass goods, services, life, health, legal responsibilities, and any other interests that may be subject to loss, damage, or devaluation. Elisa Kartika Sari and Edvendi

Simangunsong emphasize several advantages of insurance, including the ability to provide a sense of security and protection, serve as a means of saving and generating additional income, act as a tool for redistributing risks in the face of unforeseen events, and ensure a fair allocation of costs and benefits.

Suparman Sastrawidjaja's definition, as quoted by Emmy Pangaribuan Simanjuntak in the book Sri Rejeki Hartono, highlights the key characteristics of an insurance or coverage agreement. It is described as a compensation agreement, wherein the insurer commits to compensating the insured for suffered losses, with the compensation being proportionate to the incurred losses (principle of indemnity). This agreement is contingent upon the occurrence of an unspecified event, triggering the insurer's obligation to provide indemnification. Furthermore, it is a reciprocal agreement, where the insurer's obligation to indemnify is balanced by the insured's responsibility to pay a premium. The losses covered by insurance result from unpredictable events for which the insurance is obtained.

Quoting Sri Rejeki Hartono, who refers to P. L. Weiy's book "Hoofzaken van Hetverzekeringsrecht," further elucidates the three primary characteristics of an insurance agreement. It is recognized as a compensation agreement, emphasizing that one party, namely the insurer, assumes the responsibility to compensate the other party, the insured, for potential losses. Moreover, its conditional nature signifies that the insurer indemnifies the insured when the occurrence of an event cannot be predetermined. Lastly, the reciprocal nature of the agreement underscores the mutual obligations between the insurer and the insured.

Implementation of accident insurance agreements at sea for ship passengers

Maritime liability law, encompassed within Commercial Law Book II title 9, recognizes the historical origin of insurance at sea,

primarily driven by the inherent dangers associated with maritime activities. However, in contemporary times, insurance in the context of sea transportation serves the interests of both owners and the safety of goods being transported. With the growing frequency of domestic and international goods transportation, the need for insurance coverage for transported goods becomes increasingly essential (Arqam, 2001). This is emphasized by the fact that owners of goods in sea transportation constantly face the risk of their goods losing value, either through loss, damage, or destruction during transit. While such risks are anticipated, there are unforeseen circumstances that can further devalue the goods, which may not be initially expected by the owner. To mitigate potential losses, the owner of the goods can actively reduce risks and share the burden of losses with other parties, as long as it has been agreed upon beforehand. The agreement between the owner of the goods, who seeks protection from potential losses during transportation, and those willing to assume the risks, is referred to as a marine insurance agreement.

The insurance agreement facilitates the transfer of risk because it allows for the possibility of unforeseen hazards that may threaten the goods being transported, which would not typically be expected to happen to another person. This transfer of risk entails that another party assumes the responsibility to compensate for any resulting loss. In practice, the insurance coverage agreement is executed on the stock exchange with the assistance of a broker. The regulations governing brokers can be found in Book II of the Commercial Code, specifically in title 9, section six, which encompasses Articles 681-685. These articles regulate the terms and conditions related to the licensing of loss insurance intermediary businesses as specified in the Decree of the Minister of Finance No. Kep. 457/MK/IV/5/1975 dated May 2, 1875, along with the Decree of the Minister of Finance No. Kep. 595/MK/IV/8/1969,

which pertains to the registration of all intermediary businesses in the insurance sector. These regulations are supplemented by the Minister of Finance's SK No. Kep. 932/MK/IV/12/1971 dated December 2, 1971, which addresses the business acceptance of adjusters specializing in the field of loss insurance (Simanjuntak, 1980). In the marine insurance agreement, the crucial factor considered is the causal relationship between the loss suffered by the insured goods and the obligations of the insurer. If the loss is a result of an event covered under the policy, the insurer is obligated to provide compensation. Therefore, the insured cannot simply claim that the insurer must compensate for the loss solely based on the occurrence of an event. Instead, a thorough investigation or joint inspections involving the owner of the goods, the carrier, and the insurer are conducted to establish the cause of the specific loss. This is necessary to determine whether the insurer is obliged to compensate for the incurred losses or not. Based on the aforementioned description, marine insurance, or the Marine Insurance Act, serves to provide coverage for any risks encountered during transportation, particularly those associated with sea transport. Sea coverage, also known as Ocean Marine Insurance, is a form of insurance that has been in existence for a significant period compared to other types. This implies that during that time, the owners of the goods did not assume the risks arising from or potentially occurring during sea transportation, but rather made efforts to transfer these risks to other parties. Article 246 of the Commercial Law Code stipulates that insurance is an agreement between two or more parties, wherein the insurer agrees to provide reimbursement to the insured for losses, damages, loss of expected profits, or legal liabilities arising from uncertain events, in exchange for receiving an insurance premium. This aligns with the definition of insurance companies in Article 1, Number 5 of Law Number 2 of 1992 on Insurance Business, which states

that insurance companies manage risks associated with loss, loss of benefits, and legal responsibilities to third parties arising from uncertain events (based on interviews with the Head of the Port of Sekupang, Batam). Generally, accident insurance is offered by life insurance companies as an extension of the coverage provided to the insured. Individuals who have life insurance coverage can supplement it with accident insurance by paying an additional premium. The policy used for this purpose is a life insurance policy with specific mention of accident insurance, and the accident conditions are included as an integral part of the policy. However, insurance related to accidents in transportation (land, sea, and air) and road traffic is exclusively managed by PT Jasa Raharja as compulsory insurance (Hartono, 2008). In practice, loss insurance companies also offer accident insurance programs with additional coverage, such as motorcycle riding clauses, pregnancy clauses, and health clauses. In the implementation of personal accident insurance, particularly in the claims settlement process, there are often obstacles that hinder the timely fulfillment of rights and obligations of the parties involved. These obstacles can arise from either the insured or the insurer (based on interviews with the Head of the Port of Sekupang, Batam).

There are often issues related to premium payment in accordance with the provisions, resulting in unpaid premiums when a claim occurs. Consequently, claims may not be further processed or denied, as insurance operates on the principle of "no premium, no claim." Another common obstacle is the delay in reporting claims by the insured. The timeframe for reporting varies, and if the reporting period is less than 7 days, the insurer may inquire about the reasons for the delay (based on interviews with the Head of the Port of Sekupang, Batam). Several reasons for reporting delays have been identified, including the insured's family being unaware of the insurance coverage, completion of treatment before

reporting, incidents coinciding with long holidays, and the insured's lack of knowledge of the insurer's contact information. In cases where valid reasons are provided, the insurer is still obliged to process the claim. However, if the reporting period exceeds 7 days without valid justification, the insurer will promptly reject the claim in writing. It is important to note that the reason for the incident must be covered by the policy conditions. Based on reported personal accident insurance claims at PT Asuransi Jasa Indonesia (Persero) Batam City Branch Office, all claims were for events covered by the policy conditions, eliminating the grounds for claim rejection based on incidents not being covered by the policy (Radiks, 1992). Difficulties may arise when the insured is unable to provide the required claim supporting documents requested by the insurer. In some cases, this could involve the inability to obtain a traffic accident certificate from the police. Nevertheless, the insurer remains responsible for providing compensation to the insured, even if specific documents cannot be fulfilled. If the insured fails to file a claim within 12 months after the incident or cannot provide the necessary claim supporting documents within the same timeframe, the insurer will send a rejection letter to the insured. According to policy provisions, if no claim is made by the insured after 12 months, further processing of the claim will be discontinued.

CONCLUSION

Legal arrangements for marine accident insurance agreements for seagoing passengers are governed by Article 3 of Law Number 2 of 1992 concerning Insurance Business, which categorizes insurance into three types:

1. Loss insurance business, which covers the risk of loss, loss of benefits, and legal liability to third parties arising from uncertain events.
2. Life insurance business, which manages risks associated with the life or death of an insured person.
3. Reinsurance business, which provides reinsurance services for Loss Insurance Companies and/or Life Insurance Companies.

The implementation of the examination of insurance agreements for accidents at sea involving ship passengers entails the fulfillment of rights and obligations by the parties involved. In personal accident insurance, the primary obligation of the insurer is to provide compensation to the insured, which is their rightful claim. However, the obligation to provide compensation is conditional upon the occurrence or non-occurrence of a predetermined event resulting in loss due to an accident.

Several factors can pose obstacles to the examination of insurance agreements for accidents at sea involving seagoing passengers. These include late or non-compliant premium payments, claims reporting that exceeds the specified timeframe, incidents not covered by the policy, inability of the insured to complete required claim supporting documents, failure to file a claim within 12 months of the incident, and demands from the insured that exceed the policy's stipulations.

Declaration by Authors

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