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CONTESTABLE PERIOD CLAUSE IN LIFE INSURANCE CONTRACT INDONESIAN

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ABSTRACT

Purpose: Contestable period becomes a common conflict in the insurance industry in Indonesia. That issue brings a negative image to the insurance industry. Both by the insurer and the insured need more profound knowledge on the contestable period from a legal point of view to minimize that kind of conflict. Thus, to get that knowledge this study aims at examining the conception and application of the contestable period clause by judges.

Methodology: This study is a legal research method with several approaches including conceptual approach, statute approach and case approach. The legal substances for this study derived from primary and secondary sources by analyzing court judgments qualitatively.

Methodology: This study is a legal research that follows the content analysis approach. The procedure of the study includes define the term, specify a unit of analysis, locate relevant data, develop a rationale, develop a sampling plan, formulate coding categories, check data reliability and validity, and analyze data. To choose the sample of the study, the researchers used a purposive sampling technique. The data of the study were taken from court judgments, books, and articles in national and international journals concerning life insurance disputes. To analyze the data the researcher used an interactive model of analysis that consists of three steps, namely data reduction, data display, and conclusion drawing/verification.

Result: This study found that the judges made the conception by viewing the contestable period as both rights and obligations. It means that the insurers cannot only view it as a right to decline the insurance claim from the insurance beneficiaries, but they also should take it as an obligation. The obligation here is doing an investigation toward the insured statements on the contract right away after the contract was signed. In other words, in the application contestable period, the judges assumed that the insurer tends to use the contestable period as a way to avoid the beneficiaries' claim.]

Application: The result of this study is very helpful for life insurance companies, public society, justice institutions, and the government to revise the law of insurance for the sake of justice for all parties in the life insurance contract.

Novelty/Originality: Judges in Public Court, High Court, and Supreme Court [viewed the essence of the contestable period clause as a right and obligation at the same time. Therefore, they did not take this clause as their legal consideration in making judgments.

INTRODUCTION

[Insurance service is vital in planning our future, especially when it comes to pension period. Knowledge about the importance of insurance service is the strongest factor that makes people buy insurance services (Dragos, Dragos, & Muresan, 2020). In Indonesia, people's awareness of the importance of insurance is increasing. It can be seen by the number of Indonesian people who buy insurance services. As what is stated by the Head of Corporate Communications Allianz Indonesia, Wahyuni Murtiani, the market penetration of insurance service is increasing each year (Praditya, 2019). It means each year, there are more Indonesian people buy insurance services. However, the improvement of people's awareness of insurance service is not free of problems. Its increase is then followed by the improvement of insurance dispute that shows people dissatisfaction on the insurance service.

Based on the data from the Indonesian Insurance Mediation Board in 2017, hundreds of cases were reported to their office and 60 cases were being handled (Nababan, 2017). That number is increasing compared to the cases in 2016 with 42 cases and 2015 with 50 cases (Huda, 2019). According to Padian Adi, the Secretary of the Consumer Protection Advocacy Institute of North Sumatera, the insurance dispute occur because the consumers feel that they do not get their right especially when they process their claims (Tribune News, 2017). He also said that there is a tendency that the insurance services as the insured to sign a contract that weakens the position of the insured in doing their claim. Those problems bring a negative impact on people to trust in insurance service. According to the Indonesian financial services authority, public distrust on insurance products is increasing (Intan, 2019). Furthermore, that condition is getting worse since the state insurance company, Jiwasraya insurance company, got a serious corruption problem (Pribadi, 2020).

In particular to life insurance disputes, the insured's unpaid claim by the insurer dominates the cases. This happens due to different understanding of the incontestable period clause in life insurance policy between the insurer and the insured (Jing & Zhong, 2016). Both the insurer and the insured have their point of view in understanding the contestable period on the insurance contract. The obligations of containing a contestable period clause are set under the Decree of Financial Minister No. 422/KMK.06/2003. Even though there is already a regulation that explains the incontestable period, but it still becomes a problem because both the insurer and the insured have a different point of view to see a contestable period.

To solve that problem or decrease the life insurance dispute that is caused by a contestable period issue a clear understanding of the contestable period that can be accepted by both the insurer and insured should be formulated.

Therefore, the objective of this study is to examine the conception and the application of the contestable period clause by judges. This study provides information about the judges' point of view in making conception of the contestable period and the implementation of the contestable period clause. That information will become a crucial knowledge for the insurer and insured in understanding the contestable period. The result of the study also can be used for revising the life insurance contract and insurance regulation, especially life insurance.]

LITERATURE REVIEW

Insurance Act in Indonesia

Contract of insurance is set under Act No. 40/ 2014 about Insurance. Article 1 subsection (1) stated that insurance is a bilateral contract between an insurer and insured (Golubyatnikova, Casily, Victor, Marina, & Vladimir, 2019) (Republic of Indonesia, 2014). A contract of insurance is made through an official document called policy (Hartono, 2001) (Purwosutjipto, 1990). The establishment of this contract requires the insurer to sign the policy and gives it to the insured (Chai, 1992) (Birds, 2013). Based on Article 255 Wet Boek van Kophandel, the policy is an absolute requirement in an insurance contract. Therefore, the policy is the averment of the insurance contract (Sastrawidjaja & Endang, 2004).

The draft of Article 257 subsection (1) Wet Boek van Kophandel mentions that rights and obligations begin to apply since an insurance contract is made (Netherlands Indies, 1847). In case that the rights and obligations of the engaged parties are not reciprocally implemented, it may turn into an insurance dispute between the insurer and the insured. Life insurance disputes may happen due to a conflict between the insurer and the insured on the implementation of what has been previously agreed in their contract (Ingram, 2005). It happens since the insured feels difficult to claim their policy (Galzlaff, Avila, & John, 2015). The insurer claims that the insured is late in paying their policy (i.e., *lapse*), and the insured is considered having no good intention in fulfilling their life insurance application form by providing falsified information (i.e., *misrepresentation*) or hiding several material facts they know as the insured (i.e., *nondisclosure*) (Huda, 2016; Huda, Ridwan, & Hernoko, 2018; Merkin, 2007).

Contestable Period Clause

The contestable period clause is a clause that gives a unilateral right to the insurer of life insurance for having two years period of time to examine the insured's the good intention on fulfilling their life insurance application form (Huda, Nugraheni, & Kamarudin, 2016). In Dutch, the stipulation of the contestable period clause has been restricted in 2 (two) months period of time, and it is set under Article 929 subsection (2) that "On the insurer's discovery that the policyholder acted with intent to mislead the insurer... the insurer may terminate the contract with immediate effect within two months after such discovery" (Chang, 2010) (Keeton, 1970). It is different from Indonesia that still applies two years period of time. This contestable period clause, however, is often misused by the insurer as their excuse to

elude their insured's claims, and it may end with a legal dispute in court (Huda, 2017a). The matter is whether the judge has already comprehensively understood the essence of the contestable period clause in the life insurance contract.

METHODOLOGY

[This study is legal research that aims at examining the conception and application of the contestable period clause by judges. Based on the data and approach of the study, this study can be classified into qualitative research that follows the content analysis approach. According to Fraenkel, Wallen, and Hyun (2012) content analysis approach is used to study human behavior indirectly through their communication. Furthermore, they explain that this approach consists of eight steps, namely: define the term, specify the unit of analysis, locate relevant data, develop a rationale, develop a sampling plan, formulate coding categories, check data reliability and validity, and analyze data. Thus, in doing this study the researchers followed that procedure.

First, the researchers decided the terms that will be the focus of the study. In this study, those terms are contestable period conception and contestable period clause. Second, in specifying unit analysis, the researchers decided that the unit analysis is phrases that relate to the objectives of the study, i.e., contestable period. Third, the researchers located where the data can be found, in this study the data can be found in judges' legal statement, legal substances from Indonesian Insurance Arbitration and Mediation Institution (i.e., BAMI), books, and scientific journals. Fourth, the researchers built a connection between the data and the research objective. Fifth, the researchers decided the samples of the study. Sixth, the researchers chose the theme to classify the data. Seventh, after collecting and classifying the data, the researchers check the validity and reliability of the data using source triangulation. Eighth, the researchers analyzed the data and concluded to answer the research questions.

Since this study only focuses on the contestable period dispute, the researchers took the samples of the study using a purposive sampling technique. A set of criteria was applied to select the samples of the study. First, the samples are judges who are still actively into serve in the Supreme Court in Indonesia. Second, those judges should have experience in handling life insurance disputes caused by a contestable period. Third, the judges are willing to be the sample of the study. Based on that criteria Judges were taken as the samples of the study.

Based on its type, there were two types of data used in this study. They are primary and secondary data. The primary data were the judges' legal statements in deciding a legal lawsuit case on a life insurance claim and the legal substances from Indonesian Insurance Arbitration and Mediation Institution (i.e., BAMI). Then, the researchers also collected data from books and peer-reviewed articles from national and international journals, which explains the contestable period, as the secondary data. To answer the research questions, the researchers use primary data. While the secondary

data were used to explain the findings from a theoretical and empirical point of view. The validity and reliability of the data were tested using sources triangulation.

All of those data, both primary and secondary, were analyzed qualitatively using interactive model analysis that consists of three steps. Those steps were data reduction, data display, and conclusion drawing/verification (Miles, Huberman, & Saldana, 2014). During the data reduction step, the researchers selected the needed data from the collected data. The data from the judges' legal statement, BAMI legal substances, books, and articles were selected based on the theme in the research questions. The first theme is the contestable period conception and the second theme is the application of the contestable period clause. Then, on the data display step, the researchers put those data into tables that classified the data into the first theme and the second theme. By displaying the data from two different themes, the researchers then conclude to answer the first research question on contestable period conception by the judges and the second research question on the application of contestable period clause by the judges.]

DISCUSSION AND ANALYSIS

Judges Conception on Contestable Period

To create the conception of the contestable period, the judges took some regulation as the basis of the conception. The Constitution 1945, in particular to Chapter IX, regulates judicial power in which Article 24 subsection (1) mentions that "judicial power is an independent authority to organize a legal proceeding for the sake of law and justice." Article 1 subsection (1) of Act No. 48/ 2009 about Judicial Power defines this term as an independent state's authority to hold a legal proceeding for the sake of law and justice based on Pancasila and the Constitution of the Republic of Indonesia 1945 (Busthami, 2017).

A legal proceeding should implement and uphold law and justice based on Pancasila which relies on The-One-Almighty-God-based justice. Therefore, judges should maintain their judicial independence in implementing their functions. Article 10 of Judicial Power Acts mentions that courts are not allowed to refuse investigation, legal proceedings, and judgments on any filed civil cases by excusing that no law regulates such cases or the law for such cases is confusing. Instead, they are required to investigate and judge them all. Furthermore, the judgment should contain premises and basis in addition to particular articles of pertinent lexes or any other unwritten law which applies to make judgments (Azhar, 2017).

It is a must for judges to dig the values of justice in society and make them into a judgment to give justice for all parties. The essence of justice can be reached out if a state gives fair and equal treatment to everyone on their social and economic rights.

Justice as fairness stresses the principle of reciprocity. To give objective assurance, justice can be seen as fairness if it applies under pure procedural justice way. It means, justice as fairness should have processes and simultaneously be reflected through a fair procedure (Rawl, 1999).

Therefore, in building the conception for a contestable period the judges not only view it as a right but also as an obligation. The obligation here is about the obligation of the insurer to do an investigation on the validity of the information given by the insured in the life insurance contract soon after it was signed by the insured. The insurer should not see the contestable period only as a right or a way to decline the beneficiaries' claim. Besides, the insurer should fulfill the obligation to do the investigation right away after the contract was signed and informed the result of the investigation to the insured to avoid misunderstanding.

Judges' View on the Implementation of the Contestable Period

Judges in the level of Public Court, High Court, and Supreme Court have not the same perception on the essence and application of the contestable period clause in their judgments. The comprehension and independence of their judgments should enable them to create justice for disputing parties (Huda, Ridwan, & Hernoko, 2017). Toward this issue, we may analyze the following case.

The application of the contestable period clause in a life insurance contract between PT. Asuransi Jiwa Sequis Life versus Eva Hernita in case No.508/Pdt.G/2010/PN.Jak.Sel. The case is as follows: The litigant was the legal heir (wife) of Kiswanto Setiadi (the late) with two children; Gita Cenesia Setiadi (15 years old) and Evita Defyana (12 years old). Kiswanto passed away on 29th January 2010 and had been reported to District Duren Sawit, Subdistrict Malaka Jaya with death reporting form No. 1.755.03/MJ/I/2010, and he had been buried in Public Funeral Pondok Kelapa, Block AA.I, Petak 151, East Jakarta.

Kiswanto Setiadi (the late) was an insurance member of PT. Asuransi Jiwa Sequis Life (i.e., the defendant) with 2 (two) Sequis Life insurance policies of UFI A-Sequislife Protector Plus (Life insurance) which each of them was (1) Insurance Policy No. 08000039535 dated 29th February 2008 with insurance amount reached Rp.50.000.000,00 (fifty million rupiahs) and (2) Insurance Policy No. 0900168052 dated 29th February 2008 with insurance amount reached Rp. 100.000.000,00 (one hundred million rupiahs).

The dispute which turned into a legal lawsuit between those two parties was due to default on their insurance contract since the obligation of disbursing the coverage of his life insurance which amount reached IDR 150.000.000,00 (one hundred and fifty million rupiahs) fails to complete.

Through a letter No. 010/III/2010/CBO/RJ Klaim-DC, as for a claim of death of policy no. 0800039535 and No. 0900168052 on behalf of Kiswanto Setiadi (the late), dated 26th March 2010, the defendant refused the litigant's claim with an excuse that Kiswanto Setiadi (the late), as the insured, did not give any information about his illness when fulfilling his life insurance application form. Hence, his life insurance policies were all null.

The defendant excused that Kiswanto Setiadi (the late) was ever diagnosed contracting impending stroke/transient ischemic attack which was classified into mild stroke according to a comprehensive investigation by the

defendant to those treating him on 30th March 2007. His medical record (health diagnosis) was from Mitra International Hospital Jatinegara and/or doctor Sungkono Djojoatmodjo, Sp.S on 11th February 2010. In this case, the litigant was shocked knowing such information and/or diagnosis, given that the litigant (i.e., the patient's wife) always assisted her husband and never be informed, either directly and/or indirectly, about such diagnosis during her husband's medical check-up in 2017.

The defendant should provide accurate/definite evidence of any answers that Kiswanto Setiadi (the late) addressed in fulfilling his life insurance application form, especially those related to his medical record. Additionally, the defendant should take further investigation/verification of his answers through the medical test in the defendant's referral hospital to confirm and/or validate the truth of his data/information and/or answers before establishing his insurance policies.

The defendant establishing the insurance policies on behalf of Kiswanto Setiadi (the late) never took any investigation/verification on his answers/medical test, which at that moment, he still became a prospective insured. The same procedures continued when Kiswanto Setiadi (the late) proposed his second insurance application on 22nd October 2009. The insurance company did not investigate his answers related to his medical record, and it was considered as the company's negligence. Unfortunately, such negligence might not be transferred to Kiswanto Setiadi (the late) since Kiswanto Setiadi (the late) was physically and psychologically healthy when fulfilling his life insurance application form and/or signing the policies.

According to those matters, the litigant asked the Public Court of South Jakarta to make several judgments, as follows.

1. Stating that life insurance policy No. 08000395535 dated 29th February 2008 and No. 0900168052 dated 30th October 2009 remained legally valid with confining legal power, and thus it brought legal consequences for both litigant and defendant;
2. Stating that the defendant was proven to have defaulted in disbursing insurance coverage;
3. Sentencing the defendant to complete their obligation to pay the coverage of life insurance policy No. 08000395535 dated 29th February 2008 and No. 0900168052 dated 30th October 2009, which amount was IDR 50.000.000,00 (fifty million rupiahs) and IDR 100.000.000,00 (one hundred million rupiahs) respectively.

Public Court of South Jakarta had made judgment through verdict No. 508/Pdt.G/2010/PN.Jak.Sel dated 3rd March 2011 which content was as follows.

1. Stating that policy No. 08000395535 dated 29th February 2008 and No. 0900168052 dated 30th October 2009 remained legally valid with confining legal power, and thus it brought legal consequences for both litigant and defendant.
2. The defendant was proven to have defaulted (broke the contract).
3. Sentencing the defendant to complete the obligation of disbursing the insurance coverage.

The defendant's appeal against the court judgment was supported by the High Court of Jakarta with verdict No. 412/PDT/2011/PT.DKI on 3rd November 2011. The defendant sought for cassation on the pretext that contestable clause in general T&C of insurance policy stressed that "if during the contestable period, the insurer knew that the information the insured provided in his Life Insurance Application Form (i.e., SPAJ) and another information related to this insurance coverage was proven to be incomplete or falsified or far from the actual situation, either intentional or unintentional, which might evoke misperception on the insurance contract (Temel, 1995) (Yeasmeen, 2015), the insurer had right to nullify the insurance policy by giving back the remaining unit based on the price applied in evaluation period (Huda, 2017b).

The stipulation is consistent with Article 251 Wet Boek van Kophandel Jo. Article 1321 Burgerlijke wet Boek Jo. 1328 Burgerlijke wet Boek Jo. Pasal 1449 Burgerlijke wet Boek that the insurer deserves the law to nullify an insurance contract if, during 2 (two) years period of time since the contract settlement –contestable period clause- (Netherlands Indes, 1847), the applicant of cassation (i.e., appellant/defendant in the previous section) finds that the respondent of cassation (i.e., the appellee/litigant in the previous section) has provided either falsified or incomplete information against the facts (i.e., non-disclosure of material fact) in his life insurance application form (i.e., SPAJ) to (Purani, 2017) (Schuman, 2010) (Yeasmeen, 2015). In this case, the death of Kiswanto Setiadi on 28th January 2010, which was still in the contestable period that had not yet even reached 2 (two) years period of time since the settlement of his life insurance contract, made the Supreme Court gave an argument by considering the reasons for cassation as follow: *judex facti* (i.e., Public Court/High Court) was not wrong applying judgment that the appellant's reasons for cassation could not be justified and tended to be trumped up to avoid any responsibility due to the insured's death. The policy of life insurance would never be nullified by the insurer until the insured passed away. Thus, it should be considered valid and confining for both engaged parties.

On 27th December 2012, by considering such an argument, the Supreme Court finally refused the appeal of cassation the applicant (i.e., PT Asuransi Jiwa Sequis Life) had filed and sentenced them to pay IDR 500.000,00 (five hundred thousand rupiahs) for the court fee in this cassation level.

Contestable Period clause, applied as the basis of nullification by the insurer, was ignored by the judges as they saw the insurer's bad intention to escape from any claim disbursement by making up excuses (Zhu, 2020). The insurer's negligence on SPAJ data checking gave consequences for them.

Toward their legal consideration, judges of Public Court, High Court, and Supreme Court found a default indicating that the insurer had defaulted their obligation agreed in an insurance contract in terms of giving compensation to the insured's heir. They ignored the contestable period clause that made the insurer deserve to unilaterally nullify the contract if they found that the prospective insured provided either falsified or

incomplete information in fulfilling the insurance application form (i.e., SPAJ) signed by the prospective insured (Kuat, 2012) (Miller, 1988).

Yet, the judges' judgment in Public Court to Supreme Court remained to have different conceptions on how contestable period clause worked. They had not explored the essence and purposes of that clause in the life insurance contract. Besides, the two years applied as an excuse for refusal were ignored in their legal consideration.

CONCLUSION

[This study concludes that the judges view the contestable period as both rights and obligations. The insurers should not only consider the contestable period as a right to decline the insurance beneficiaries' claim, but they also should take it as an obligation. To take it as a right, the insurers must do the investigation toward the insured statements on the contract right away after the contract was signed. In the application contestable period clause, the judges assumed that the insurer tends to use the contestable period as a way to avoid the beneficiaries' claim. Therefore, the government needs to specifically regulate this clause in a revision of insurance law to define the concept and the period of nullifying a life insurance contract.]

LIMITATION AND STUDY FORWARD

This study is limited to the life insurance dispute cases caused by the contestable period only. Since there are several other problems deal with life insurance service further study by focusing on other problems in life insurance is needed. Those kinds of studies will help the insurers, insured, and the government to provide quality insurance service, gets a better insurance service, and provides clearer insurance regulation respectively.]

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Authors Contribution

[Mokhamad Khoirul Huda, Sadjijono, and Tauchid M. Noor have contributed equally to the manuscript for conceptualization, formal analysis, investigation, methodology, writing, and final editing. All authors have read and agreed to the published version of the manuscript.]

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