

The Legal Responsibility of Insurance Companies towards Customers for Mistakes by Commercial Health Insurance Agents in Indonesia

Tanggung Jawab Hukum Perusahaan Asuransi Terhadap Pelanggan atas Kesalahan Agen Asuransi Kesehatan

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Abstract: The relationship between the health insurance company and the customer is a coverage relationship which is proven by the existence of an insurance policy. The authority of an insurance agent to market an insurance product comes from an Agency Agreement. The insurance company's legal responsibility related to insurance agent errors can take the form of criminal, civil and administrative responsibility. The research aims 1) to explain the legal relationship of the parties in the health insurance agreement and 2) to explain the legal responsibility of the insurance company related to the insurance agent's error for health. The type of research used in writing this research is normative juridical research, namely research that examines the internal aspects of positive law. There are several types of approaches in legal research that were used in the preparation of this paper, namely 1) Statute approach, namely the approach used to study and analyze all laws and regulations relating to the legal issue being handled.; 2) Conceptual approach (conceptual approach). The relationship between the agent and the health insurance company is a contractual relationship as evidenced by an agency agreement for health. Agents act for and on behalf of insurance companies, where agents market and sell insurance products. The relationship between the insurance company and the customer is a coverage relationship which is proven by the existence of an insurance policy. The authority of an insurance agent to market an insurance product comes from an Agency Agreement. The conclusion of research showed that the legal relationship between the parties is interrelated and there is a policy agreement.

Keywords : insurance company legal responsibility towards customers for health insurance agent

Abstrak: Hubungan antara perusahaan asuransi kesehatan dengan pelanggan merupakan hubungan pertanggungjawaban yang dibuktikan dengan adanya polis asuransi. Kewenangan agen asuransi untuk memasarkan produk asuransi berasal dari Perjanjian Keagenan. Tanggung jawab hukum perusahaan asuransi terkait kesalahan agen asuransi dapat berupa tanggung jawab pidana, perdata, dan administratif. Penelitian ini bertujuan 1) menjelaskan hubungan hukum para pihak dalam perjanjian asuransi kesehatan dan 2) menjelaskan tanggung jawab hukum perusahaan asuransi terkait kesalahan agen asuransi terhadap kesehatan. Jenis penelitian yang digunakan dalam penulisan penelitian ini adalah penelitian yuridis normatif, yaitu penelitian yang mengkaji aspek internal hukum positif. Ada beberapa jenis pendekatan dalam penelitian hukum yang digunakan dalam penyusunan makalah ini, yaitu 1) Pendekatan Statuta, yaitu pendekatan yang digunakan untuk mempelajari dan menganalisis seluruh peraturan perundang-undangan yang berkaitan dengan permasalahan hukum yang sedang ditangani. ; 2) Pendekatan konseptual (conceptual approach). Hasil penelitian ini menjelaskan bahwa hubungan

¹ Benuf, Kornelius dan Azhar, Muhamad. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer" *Jurnal Gema Keadilan*, Volume 7, (2020), pp. 133.

antara agen dengan perusahaan asuransi kesehatan merupakan hubungan kontraktual yang dibuktikan dengan perjanjian keagenan untuk kesehatan. Agen bertindak untuk dan atas nama perusahaan asuransi, dimana agen memasarkan dan menjual produk asuransi. Hubungan antara perusahaan asuransi dengan nasabah merupakan hubungan pertanggungjawaban yang dibuktikan dengan adanya polis asuransi. Kewenangan agen asuransi untuk memasarkan produk asuransi berasal dari Perjanjian Keagenan. Kesimpulan penelitian ini menunjukkan bahwa hubungan hukum antara para pihak adalah saling berkaitan dan ada polis perjanjian.

Kata kunci : tanggung jawab hukum perusahaan asuransi terhadap nasabah bagi agen asuransi kesehatan

INTRODUCTION

The increase in the number of increasingly varied diseases indirectly causes an increase in the cost of care required to handle these cases. Based on data from the World Health Organization, annual health costs have increased in various parts of the world. Based on survey data conducted by Willis Towers Watson, there is an increase in global health costs throughout the world at the same speed as previous years. This increase occurs continuously from year to year. For example, in 2020 there was an increase in health costs of 6.8%, whereas in 2019 the increase in health costs was 6.7%. The most dramatic increase in health costs occurred in the Middle East and Africa region where the increase occurred by 9.3% in 2020 from 8.5% in 2019. In the European region the increase in health costs remained stable at 4.3% while in the Latin American region, health costs decreased from 12.2% in 2020 to 11.7% in 2019.² In Indonesia itself, health costs have also continued to increase over the last decade. The data reveals that the increase in annual costs in Indonesia has reached 36% in the last 10 years.³

Medical costs continue to increase year after year. According to the 2019 Global Medical Trends Survey report from Willis Towers Watson, medical cost inflation in Indonesia in 2019 reached 10.8% and according to the 2019 Health Statistics report from BPS, it shows that the average cost for health care is much greater when compared to the cost of purchasing medical equipment and costs. Doing a health test. Having health insurance allows us to live better every day, with peace of mind without worrying about financial disruption due to increasingly high health costs.

Based on the object covered, insurance is divided into 2 types, namely total insurance and loss insurance. Total insurance protects people, whether it is human health or safety, examples of which are accident insurance, sickness insurance and life insurance. Meanwhile, loss insurance protects people from losses they incur, examples of which are theft insurance, fire insurance, and insurance on harvests.⁴ An agent is tasked with representing the company in marketing the company's products to the public. However, in practice, an insurance agent is also asked to sell the product, and not just market, the insurance agent is also given the authority to transact with third parties, which means the

² Watson, Willis Towers. "Global Medical Trends Survey Report" www.wtwco.com/en-US/Insights/2019/11/2020-global-medical-trends-survey-report. available 07 September, (2022), at 20.25 WIB.

³ Setiawan, Sakinah Rakhma Diah. "Biaya Kesehatan di Indonesia Naik 36 Persen Pertahun" www.money.kompas.com/read/2017/02/02/145811626/bayar.kesehatan.di.Indonesia.naik.36.persen.per.tahun. Accessed 06 September (2022), 20.05 WIB.

⁴ Mulhadi, *Dasar-Dasar Hukum Asuransi*, Cetakan ke-1. Depok: Rajawali Press, 2017, hal. 94

agent also acts as a representative of the insurance company for the seller of the product and is not just limited to marketing.⁵

Currently, the existence of government facility health insurance in the form of JKN (National Health Insurance managed by BPJS Health, has become a practical solution for the community regarding dealing with emergency funds when they are sick. Although some groups of people with their own characteristics, such as the upper middle class, feel they still need additional facilities by participating in health insurance from private providers.

Whatever the patient's background in using health insurance, it cannot be separated from managers in health institutions such as hospitals in managing and assisting patients in the process of using health insurance. Moreover, if it is not managed well, patients are prone to complain because the claims process is difficult or even failed. Scientifically, the process of managing health insurance is studied in the Master's program in Health Policy and Management at S2. There is a specialization program, namely Health Insurance Financing and Management Policy (KPMK) in the UGM Health Policy and Management master's study program. Health Insurance Financing and Management Policy program curriculum that proactively supports health insurance management needs

Career opportunities with a study background in the field of Health Insurance Financing Policy and Management are still very broad. Of course, because health insurance itself is something that is attached to the patient's needs. To find out more about the Health Insurance Financing and Management Policy program in the UGM Health Policy and Management master's study program (S2).

Based on data , the Financial Services Authority shows that the growth of insurance industry assets speciallthas continued to increase since 2014 from IDR 807.7 trillion to IDR 1,325.7 trillion in December 2019. Likewise, when viewed from the perspective of receiving premium funds from insurance participants. Commercial insurance premium data in 2019 also shows growth of 6.1% per year to IDR 261.65 trillion. Life insurance premiums amounted to IDR 169.86 trillion and general insurance/reinsurance premiums increased by IDR 91.79 trillion.⁶

The development of the health insurance industry is currently very rapid. This cannot be separated from the role of health insurance agents in marketing insurance products. On the other hand, there are many cases where health insurance agents do not carry out their roles as they should. Some cases that occurred and involved health insurance agents were:

1. Case of health insurance agent fraud against insurance customers. Where the agent promises that you only need to pay the premium for 3 years, then in the 7th year the funds and benefits can be withdrawn. However, in reality, in the field, the customer is no longer able to contact the insurance agent and the insurance policy has lapsed. Fraud committed by health insurance agents.⁷
2. Case of forgery of customer letters and signatures by health insurance agents. In this case, the insurance agent forged his customer's signature to open a new policy without

⁵ Suharnoko, *Hukum Perjanjian*, Jakarta: Kencana, 2004, hal. 41.

⁶ Sakinah Rakhma Diah Setiawan. " Lima Tahun Terakhir Kinerja Industri Asuransi Positif " www.money.kompas.com/read/2020/01/21/172614726/lima-tahun-terakhir-kinerja-industri-tansi-positive. Accessed 06 September (2022), 20.20 WIB.

⁷ Marina. " Masalah Penggelapan Dana yang Dilakukan Tenaga Pemasar Resmi Asuransi " www.mediakonsumen.com/2022/08/26/surat-pembaca/masalah-penggelapan-dana-yang-dilakukan-tenaga-pemasar-resmi-asuransi. Accessed September 7, (2022), 21.35 WIB.

the knowledge of the customer concerned, causing the customer to have to make payments for 2 insurance policies.⁸

3. A case in Taiwan, where an insurance agent committed fraud worth billions of rupiah against customers by not handing over the premium payment money that had been paid by the customer to the insurance company through the insurance agent but the insurance agent did not deposit the money to the insurance company.⁹
4. Insurance case with a unit link concept involving many insurance companies and many customers. In this case, the insurance agent never provided an explanation regarding the investment placement portion of the agreement, the monthly report regarding investment performance was never updated, until finally the assets plummeted and almost ran out. Apart from that, the insurance agent also promises a full return of capital from the premiums paid along with investment returns in the 10th year.¹⁰

Some previous research on the insurance company's legal responsibility towards customers for the insurance agent's mistakes. Astuti¹¹ researched "Legal Protection for the Insured in Rejection of Insurance Policy Claims Submitted to the Financial Services Authority in Pekanbaru City" with results the authority of the financial services authority in legal protection against the insured in the rejection of an insurance policy claim in Pekanbaru City refers regulation, supervision and protection in accordance with statutory regulations valid invitation. efforts made by the Financial Services Authority towards settlement of disputes over rejection of insurance policy claims against the Insured, seen in the principles of implementation, namely: principles of transparency, the principle of fair treatment, the principle of justice, the principle of confidentiality and security of consumer data/information, principles of handling complaints. Meanwhile, the obstacles encountered by the Financial Services Authority in make efforts to resolve disputes over rejection of insurance policy claims in Pekanbaru City, namely the lack of information obtained and lack of consumer understanding of the insurance products they want done.

Setiawan¹² conducted research on juridical analysis of the resolution of Diamond Investa insurance claim disputes between PT Asuransi Jiwa Bakrie and the Insured. The results of the research show that insurance claims do not occur in violation of investment placement, failure to pay occurs solely because of aggressiveness in placing investments in insurance default products. There are problems that occur in the insurance industry involving health insurance agents, so the author is interested in conducting research with the title Legal Liability of Insurance Companies towards Customers for Insurance Agent Mistakes.

⁸ Decision of the Supreme Court of the Republic of Indonesia Number 2127/Pid.B/2021/PN.Sby, dated 25 November 2021.

⁹ Tim CNN. "Vic Chou Jadi Korban Penipuan Agen Suransi, Rugi Rp16 Miliar", www.cnnindonesia.com/hiburan/20220803101838-234-829615/vic-chou-jadi-korban-penipuan-agen-asuransi-rugi-rp16-miliar. Accessed September 7, (2022), 23.48 WIB.

¹⁰ Ariyani Yaakti Widyastuti. "To the DPR, Unit Link Victim Customers Reveal Various Modes of Insurance Fraud" www.business.tempo.co/read/1514515/ke-dpr-nasabah-korban-unit-link-beberkan-berbagai-modus-penipuan-besar?page_num=2. Accessed 07 September (2022), 23.55 WIB.

¹¹ Astuti, Widya. "Perlindungan Hukum Terhadap Tertanggung Dalam Penolakan Klaim Polis Asuransi Yang Diajukan Ke Otoritas Jasa Keuangan Di Kota Pekanbaru.. Thesis. (Pekan Baru, Bachelor of Laws at Riau Islamic University Pekanbaru, 2022).p.6

¹² Setiawan, Panji Adhi. "Analisa Yuridis Terhadap Penyelesaian Sengketa Klaim Asuransi Diamond Investasi antara PT Asuransi Jiwa Bakrie dengan Tertanggung." Thesis. (Jakarta, University of Indonesia, 2020), p.5

The research aims 1) to explain the legal relationship of the parties in the health insurance agreement and 2) to explain the legal responsibility of the insurance company related to the insurance agent's error for health.

RESEARCH PROBLEMS

Based on this phenomenon, the research problem formulation is 1) how the legal relationship of the parties in the health insurance agreement and 2) The legal responsibility of the insurance company related to the health insurance agent's error

METHOD

The type of research used in writing this research is normative juridical research, namely research that examines the internal aspects of positive law. This type of legal research bases its analysis on applicable laws and regulations that are relevant to the legal issues that are the focus of the research.¹³ This normative juridical research is carried out by examining various kinds of formal legal rules such as laws, theoretical literature and others.

There are several types of approaches in legal research that were used in the preparation of this paper, namely 1) Statute approach, namely the approach used to study and analyze all laws and regulations relating to the legal issue being handled.¹⁴; 2) Conceptual approach (conceptual approach) is an approach that originates from views and doctrines that have developed from legal science, the hope is that by understanding the views and doctrines that are currently developing in legal science, the author can find ideas that give birth to legal understanding, concepts - legal concepts and legal principles relevant to the issues discussed.¹⁵

The sources of legal materials in this writing consist of primary legal materials, secondary legal materials and tertiary legal materials. The primary legal materials used in this research are:

- a. Law of the Republic of Indonesia Number 40 of 2014 concerning Insurance.
- b. Regulation of the Minister of Finance of the Republic of Indonesia Number 152 of 2012 concerning Good Corporate Governance for Insurance Companies.
- c. Code of Civil law
- d. Commercial Law Book
- e. Financial Services Authority Regulations

Secondary legal materials consist of books written by legal experts, health law journals, expert opinions, articles from print and electronic media. Tertiary legal materials consist of materials that provide instructions and explanations for primary and secondary. The analysis of legal materials used in this research is descriptive normative, where this type of analysis does not use measurable concepts or expressed in numbers or statistics but carries out analysis of legal materials based on legal norms or rules (in the broadest sense consisting of legal values, legal principles, and legal rules as well as in the narrow sense and authoritative texts or legal rules), legal concepts or legal doctrine contained in the

¹³ Benuf, Kornelius dan Azhar, Muhamad. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer" *Jurnal Gema Keadilan*, Volume 7, (2020), pp. 23 - 24.

¹⁴ Benuf, Kornelius dan Azhar, Muhamad. "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer" *Jurnal Gema Keadilan*, Volume 7, (2020), pp. 133.

¹⁵ Ibid., p. 135.

theoretical framework or literature review are those used to answer the problems in this research.

The collected legal materials are then processed systematically and consistently, and analyzed. Theoretical analysis is carried out on the legal material to determine, understand and explain legal studies of cases of insurance agent errors and legal liability.

DISCUSSION

The legal Relationship of Parties in The Health Insurance Agreement

The relationship between an insurance agent and an insurance company is a contractual relationship. The contractual relationship between the two parties is proven by the existence of an agency agreement made between the insurance company and the insurance agent.¹⁶ Representatives or agencies generally contain a mandate so that if we look at the breadth of authority, the representative or agency is the broadest while the granting of power is the narrowest.¹⁷

The relationship between the insurance company and the insured is a coverage relationship, in contractual form through an insurance agreement or insurance policy. Starting from an agreement between the parties, this insurance policy is legal evidence that an insurance agreement exists. Thus insurance is a consensus agreement. The legal relationship between the insurance company and the insured is an insurance or coverage relationship which is realized by the existence of an agreement. The insurance agreement must be made in writing in a deed called a policy. This policy is proof of the existence of a legal relationship between the insurance company and the insured.

Agency is a relationship that gives someone the authority to act for or represent another based on the authority given by the principal. The relationship between these two parties can take the form of agent and principal, employer and employee, employer and employee. In the Civil Code, the term representative is broader than agency because it also includes representatives born of law, such as guardianship. Meanwhile, the granting of power of attorney is an agreement between the party giving the power of attorney and the recipient of the power of attorney which gives authority to the recipient of the power of attorney for and on behalf of the person giving the power of attorney to carry out and/or carry out certain legal acts.

Suharnoko sees that agency agreements are included in mixed agreements because when viewed from its characteristics, agency agreements contain two types agreement, namely a power of attorney agreement where the principal appoints an agent to be his representative/proxy as well as a sales and purchase agreement where the agent is given the authority to carry out acts of selling the principal's goods or services to other parties

The agency concept in the insurance sector is basically similar to the agency concept in the banking world. In the world of banking, banks themselves act as marketers and sales

¹⁶ Setiawan, Eki Dyata Fredi, Susetyo, Herman dan Saptono, Hendro, *Pertanggungjawaban Agen Asuransi Terhadap Perusahaan Asuransi Jika Tertanggung Melakukan Wanprestasi, Diponegoro Law Review*, No. 2, Volume 1, (2013), p.5.

¹⁷ Setiawan, Eki Dyata Fredi, Susetyo, Herman dan Saptono, Hendro, *Pertanggungjawaban Agen Asuransi Terhadap Perusahaan Asuransi Jika Tertanggung Melakukan Wanprestasi, Diponegoro Law Review*, No. 2, Volume 1, (2013), p.128.

¹⁸ Suharnoko, *Hukum Perjanjian : Teori dan Analisis Kasus*, Jakarta : Kencana, 2018, hal.45

agents for non-bank products which basically act as intermediaries between principals (product manufacturers) and third parties (buyers/customers). The bank's role is to mediate the principal's needs with third parties for non-bank products due to the principal's limitations. In this case the bank is a representative acting on behalf of the principal to interact with third parties. The legal relationship between the bank and the principal is based on an agency contract in the form of cooperation determined by the parties in order to regulate the rights and obligations of each party. The bank must pay attention to its obligations and must not act outside the agency contract so that if a problem occurs in the future, all risks that arise will shift to the principal as long as the bank as agent does everything in accordance with the agency contract. If the bank as agent acts outside the agency contract then all risks arising are the responsibility of the bank itself. The agent does not have any responsibilities or obligations that will be stated in the contract between the principal and a third party.¹⁹ The agency agreement is the legal basis between the parties to start running a business. An entrepreneur or a legal entity can be assisted in running their company by another party by handing over certain activities due to time constraints, expanding product marketing or lack of competence to do certain work.²⁰

The insurance industry will have difficulty achieving every target if marketing is only carried out by insurance companies. Insurance companies need to be assisted by intermediaries or representatives to assist in marketing insurance products and the claim implementation process, giving rise to an agency concept.²¹ In a common law legal system, agency can be born from an agreement or born by law, based on law. The main criterion for agency according to the common law legal system is to act on behalf of, which means that agency has similarities to the granting of power of attorney, namely that the recipient of the power of attorney acts for and on behalf of the power of attorney or represents the power of attorney. In this case, the agency is considered the center of business activities because none of the owners can run the business themselves so they have to delegate several things to agents (intermediaries). In the partnership concept, work partners act as agents. In a company, shareholders as owners cannot work alone, so they delegate their authority to the board of directors who then also delegate their authority to company officials. The common law legal system contains an element of supervision by the principal over the agent so that the relationship between the two is a vertical relationship.²²

Health insurance agents still make mistakes when completing work. The forms of insurance agent error are explained as follows.

- a. Health insurance agents do not have agency certificates and are not registered with the Financial Services Authority.

According to Financial Services Authority Regulation Number 67 of 2016 concerning Business and Institutional Licensing of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies, hereinafter referred to as POJK Business and Institutional Licensing of Insurance Companies Article 71 also states that every insurance agent must be registered with the Services Authority. Finance. This is not limited only to health insurance agents who work alone but also to health insurance agents who work for a legal entity. The requirement for an insurance

¹⁹ Putera, Andika Persada and Zamroni, Mohammad. "Legal Protection For Customers Of Non-Bank Products In Indonesia" *Journal of Legal, Ethical and Regulatory Issues*, Volume 22, Issue 3, (2019), p. 4.

²⁰ Ridwan Khairandy, *Pokok-pokok Hukum Dagang Indonesia*, Yogyakarta : FH UII Press, 2013, ha. 247.

²¹ Putera, Andika Persada. "Keagenan Bank Dalam Perspektif Common Law System" *Perispektif Hukum*, No. 2, Volume 16, 2016p. 181 - 182.

²² *Ibid.*, p. 182 - 183.

agent to be registered with the Financial Services Authority is that he must have an agency certificate issued by the Professional Certification Institute in the insurance sector.

Based on the regulations outlined above, it is clear that to be able to carry out their profession legally, an insurance agent must be registered with the Financial Services Authority and certified by an authorized professional certification body. Registered and certified are mandatory components that must be fulfilled by an insurance agent. Referring to Article 18 Paragraph (2) of Law Number 13 of 2003 concerning Employment, it is stated that recognition of work competency is carried out through work competency certification which assesses a person's work ability which includes aspects of knowledge, skills and work attitudes that are in accordance with established standards. In the insurance sector, work competency certification is implemented and developed based on the Indonesian National Work Competency Standards (SKKNI) in the Insurance Sector. In other words, certification and registration ensure that an agent is competent and authorized to carry out their profession. If an unregistered and uncertified insurance agent markets insurance products, he can be said to be guilty of violating the provisions and can be subject to sanctions in accordance with applicable regulations.

b. Insurance Agent Accepts Premium Payments or Contributions Without Insurance Company Approval.

Based on Article 28 Paragraph (1) of the Insurance Law, an insurance agent is allowed to accept premium payments or contributions from policy holders or participants so that basically it is legal or not a problem if an insurance agent does this. However, paragraph (2) clearly adds additional provisions as a condition for implementing paragraph (1), which states that an insurance agent can accept premium payments or contributions from policy holders or participants after obtaining approval from the insurance company. So in this case what is wrong is if an insurance agent accepts premium payments or contributions without the knowledge or approval of the insurance company and this can be subject to sanctions in accordance with applicable regulations.

Permission to accept or not accept premiums or contributions from customers is all contained in the agency agreement that the agent has signed before starting to represent an insurance company. As long as the agency agreement is still permitted to receive premiums or contributions, the insurance agent is still authorized to receive payments.

c. Insurance Agent Holds or Manages Premiums or Contributions.

The Insurance Law clearly states the authority of an insurance agent to accept premium payments or contributions from policy holders or participants, but this only provides limited authority. This authority is sometimes misused by some unscrupulous health insurance agents to obtain additional profits or to commit fraud against insurance customers. This is where an insurance agent's mistake lies if it is proven that he is holding or managing these funds. This is something that often happens and has a big impact on insurance customers, so this authority needs to be reviewed because it is no longer in line with current developments, namely where insurance customers can directly deposit payments to insurance companies easily and quickly without needing to go through an intermediary.

d. Health insurance agents Do Not Submit Premiums or Contributions to Insurance Companies within the Predetermined Time Period

One form of insurance agent error that is often encountered is not submitting premiums or contributions to the insurance company on time. This happened because there were bad intentions from the insurance agent. The agency agreement made between the insurance company and the insurance agent clearly contains a clause regarding this matter, whether the insurance agent is given the authority to accept premium payments or contributions or not and the length of the period. Especially for agents who do not deposit policyholder premium payments with the principal, the agent must cover losses arising from this action. Compensation for losses is carried out by deducting the agent's rights in the form of provisions or bonus incentives from the agent concerned, withholding the agent's license or collateral in the form of a guarantee letter which must be signed by the agent.²³

e. Insurance Agent Provides Incorrect, False, and/or Misleading Information.

In the Insurance Law Article 31 Paragraph (2) clearly regulates that both health insurance agents, insurance and reinsurance brokers and insurance companies are obliged to provide correct, not false and not misleading information to insurance customers regarding risks, benefits, obligations and other things in the insurance policy. If this is not carried out properly, each person mentioned above may be subject to criminal sanctions as regulated in article 75, namely a maximum imprisonment of five years and a maximum fine of five billion rupiah.

The factor of health insurance agents' ignorance of the insurance products they market can also occur in the field. This ignorance does not mean not having mastered it at all but understanding the product only half way or not following updated information from the insurance company. The intentional factor carried out by the insurance agent is a form of bad faith. Good faith is an important component in an agreement. In the Civil Code Article 1338 it is stated that all agreements made in accordance with the Law apply as Law to those who make them.

f. Health insurance agents Falsify Insurance Company Documents.

Based on POJK Insurance Company Business Administration Article 18, it is stated that health insurance agents inform the documents required for submitting the insurance coverage application form, request the documents required for submitting the application form and other documents requested by the insurance company and ensure that insurance customers fill out all insurance coverage application forms completely in accordance with the documents submitted. Based on the Insurance Law, Articles 33 and 78 clearly state that every person is prohibited from falsifying insurance company documents. If this is violated, sanctions can be imposed in the form of imprisonment for a maximum of six years and a fine of a maximum of five billion rupiah.

The Legal Responsibility of Health Insurance Agents To Insurance Customers for Their Mistakes

An insurance agent in order to market insurance products for an insurance company is at risk of making a mistake. Errors that arise can be in the form of unintentional errors or intentional errors or those that are known to have a negative impact on insurance customers.²⁴ For errors arising from insurance customers, an insurance agent can be held responsible, whether criminal, civil or administrative. Currently, the existence of government facility health insurance in the form of JKN (National Health Insurance

²³ Huda, M. Khoirul, Op.Cit., p.52.

²⁴ Triwulan, Titik dan Febrian, Shinta. "Perindungan Hukum bagi Pasien" Pretasi Pustaka, Jakarta, (2016).p.52

managed by BPJS Health, has become a practical solution for the community regarding dealing with emergency funds when they are sick. Although some groups of people with their own characteristics, such as the upper middle class, feel they still need additional facilities by participating in health insurance from private providers.

Whatever the patient's background in using health insurance, it cannot be separated from managers in health institutions such as hospitals in managing and assisting patients in the process of using health insurance. Moreover, if it is not managed well, patients are prone to complain because the claims process is difficult or even failed. Health Insurance Financing and Management Policy program curriculum that proactively supports health insurance management needs. Career opportunities with a study background in the field of Health Insurance Financing Policy and Management are still very broad. Of course, because health insurance itself is something that is attached to the patient's needs.

a. Criminal Law Responsibility.

Criminal legal responsibility for an insurance agent who makes a mistake is regulated in the Insurance Law. The criminal acts and sanctions that can be imposed vary greatly depending on the error or violation committed. In this case, even though there is no direct legal relationship between the customer and the agent, the agent here acts for and on behalf of the insurance company he represents.

Based on the Insurance Law, Article 75 states that Any person who deliberately does not provide information or provides incorrect, false and/or misleading information to the Policy Holder, Insured, or Participant as intended in Article 31 Paragraph (2) shall be punished by imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). Based on the Insurance Law, Article 76 states that Any person who embezzles premiums or contributions as intended in Article 28 paragraph (5) and Article 29 paragraph (4) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

Based on the Insurance Law, Article 78 states that sEvery person who falsifies Insurance Company documents as intended in Article 33 shall be punished with a maximum imprisonment of 6 (six) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

b. Civil Law Liability.

Civil legal responsibility for health insurance agents who make mistakes completely shifts to the insurance company. In cases where an agent who is carrying out his duties representing an insurance company makes a mistake which shows bad faith, then the insurance company being represented can be categorized as having bad faith as well. Where an insurance agent only prioritizes prospective insurance customers in immediately closing the insurance agreement without considering the risks that could/might be experienced by prospective insurance customers in the future, the insurance company as the insurer must be responsible for these mistakes.

The above is in accordance with the provisions contained in the Insurance Law Article 28 paragraph (7) and POJK Insurance Business Implementation Article 16 Paragraph (3) states that a pThe insurance company is fully responsible for the consequences arising from the insurance coverage carried out by the insurance agent concerned. Insurance companies or health insurance agents who base/make excuses that insurance customers do not provide correct information or look for other reasons that are not true just as a

basis for not fulfilling their obligations to pay the value of benefits are an act of breaking a promise (default).

c. Administrative Legal Responsibility.

The insurance law very clearly and firmly regulates administrative sanctions for anyone who commits a violation. The authority to impose sanctions on violators of this law is given to the Financial Services Authority. Article 70 of the Insurance Law states: The Financial Services Authority has the authority to impose administrative sanctions on anyone who violates the provisions of this Law and its implementing regulations. Referring to the definition of every person according to article 1, namely every person is an individual or corporation. Health insurance agents are also included in the category of natural persons in article 1 so that they can be held administratively responsible.

In general, administrative sanctions that can be given based on insurance law article 71 are in the form of a written warning; restrictions on business activities, for some or all business activities; prohibition on marketing insurance products or sharia insurance products for certain business lines; revocation of business license; cancellation of registration statements for Insurance Brokers, Reinsurance Brokers and Health insurance agents; cancellation of registration statements for actuarial consultants, public accountants, appraisers, or other parties who provide services to Insurance Companies; cancellation of approval for mediation institutions or associations; administrative fines; and/or prohibition from being a shareholder, controller, director, board of commissioners, or the equivalent of a shareholder, controller, director and board of commissioners in a legal entity in the form of a cooperative or joint venture, sharia supervisory board, or occupying an executive position under the directors, or equivalent to an executive position under the board of directors in a legal entity in the form of a cooperative or joint venture with an insurance company.

Specifically, administrative sanctions for health insurance agents who commit violations include written warnings and cancellation of registration statements for health insurance agents. Based on Financial Services Authority Regulation Number 17 of 2017 concerning administrative sanctions in the insurance sector. Administrative sanctions as intended in Article 2 paragraph (2) of the regulation are imposed on Insurance Brokers, Reinsurance Brokers, Health insurance agents, or other parties who are not professional service providers for Insurance Companies in stages starting with administrative sanctions in the form of written warnings, unless otherwise regulated. . The imposition of administrative sanctions in the form of written warnings as intended in paragraph (1) shall be carried out a maximum of 3 (three) times in a row for each violation namely administrative sanctions in the form of a first written warning, a second written warning, and a third or final written warning. The period for applying administrative sanctions in the form of written warnings to Insurance Brokers, Reinsurance Brokers, Health insurance agents, or other parties who are not professional service providers for the respective Insurance Companies is a maximum of 30 (thirty) days from the stipulation of the administrative sanctions.

The Legal Responsibility of The Insurance Company Related to The Helath Insurance Agent's Error

a. Criminal Law Responsibility.

A part from being able to impose criminal legal responsibility on individuals, it can also be imposed on corporations such as insurance companies. Criminal law liability may still apply to all insurance companies. This responsibility can arise due to the management

error of the insurance company itself or due to the error of the insurance agent who represents it. This is clearly regulated in the Insurance Law. The criminal acts and sanctions that can be imposed vary greatly depending on the error or violation that occurred. The insurance agreement between the insurance company and the customer, or better known as the policy, clearly shows the legal relationship between the two. The existence of a legal relationship means that rights and obligations arise for each party. What is meant by insurance company here is both the management of the insurance company and the insurance agent who acts to market the products of an insurance company. In this case, even though there is no direct legal relationship between the customer and the agent, the agent here acts for and on behalf of or to act on behalf of the insurance company he represents so that any mistakes made by the insurance agent are also the responsibility of the insurance company.

Based on OJK Insurance Business Implementation Article 16 Paragraph (3) states that insurance companies that use health insurance agents to market their insurance products are fully responsible for the consequences arising from insurance coverage carried out by the insurance agent concerned.

Based on the matters stated above, it is clear that all consequences carried out by the insurance agent are the responsibility of the insurance company. The penalty imposed on a corporation is a maximum fine of IDR 600,000,000,000.00 (six hundred billion rupiah).

b. Civil Law Liability.

Civil legal responsibility is part of the overall responsibility that insurance companies must fulfill towards insurance customers who are harmed by the actions of the insurance company's insurance agent. In the field of civil law, the insurance company's responsibility can be requested or prosecuted if the insurance company or insurance agent defaults on the agreement agreed upon by both parties. Defaults that occur can take various forms, such as when an insurance company refuses to provide compensation to an insurance customer who has submitted a claim and complies with the agreed conditions. If there is an agreement between the two parties then if a risk occurs, the insurance company as the guarantor is obliged to pay the benefit value according to the policy. If the insurance company does not pay it, this is considered a breach of contract and compensation can be requested for damages due to the breach of contract.

Default itself is a term used to follow up on a party who is bound to an agreement but does not carry out their obligations as mutually agreed upon. As a result of a breach of contract, one party can demand cancellation of the agreement and demand compensation from the party who committed the breach. The party who commits the violation must bear the consequences for the rights of the other party who is harmed. The legal basis for default is contained in Article 1238 which states dThe debtor is declared to be in default by means of a warrant, or by means of a similar deed, or based on the strength of the agreement itself, namely if this agreement results in the debtor being deemed to be in default after the specified time has elapsed.

Article 1243 of the Civil Code states pCoverage for costs, losses and interest due to non-fulfillment of an obligation begins to be mandatory if the debtor, even though he has been declared in default, still fails to fulfill the obligation, or if something that must be given or done can only be given or done within a time that exceeds the time specified. .This is different from default in the insurance sector. If a default occurs due to the actions of the insurance agent or insurance company, the insurance company is obliged

to compensate or pay the value of the benefits that have been agreed or are the right of the insurance customer.

c. Administrative Legal Responsibility.

Administrative sanctions in the insurance sector do not only apply to health insurance agents but also apply to insurance companies that violate applicable regulations. Administrative sanctions that can be imposed on insurance companies as intended in Article 2 paragraph (2) Financial Services Authority Regulation Number 17 of 2017 concerning administrative sanctions in the insurance sector.

Based on Financial Services Authority Regulation Number 17 of 2017 concerning administrative sanctions in the insurance sector Article 4 states that pAn Insurance Company is subject to administrative sanctions in the form of restrictions on business activities if the Insurance Company cannot overcome violations which are the cause of the issuance of a final written warning sanction within the time period as intended in Article 3 paragraph (4) or paragraph (5). Administrative sanctions in the form of restrictions on business activities as intended in paragraph (1) can be imposed on some or all business activities. The Financial Services Authority can impose sanctions on business activity restrictions for some or all of the insurance business activities without prior imposition of administrative sanctions in the form of written warnings in the event that the financial health condition of the Insurance company worsens and/or the Insurance is deemed to endanger the interests of the policy holder, insured or participant.

Based on Financial Services Authority Regulation Number 17 of 2017 concerning administrative sanctions in the insurance sector Article 6 states that pInsurance companies are subject to administrative sanctions in the form of revocation of business permits if the Insurance Company is unable to overcome violations which are the cause of the issuance of administrative sanctions in the form of restrictions on business activities for all business activities up to the time period as intended in Article 4 paragraph (5) letter b. Insurance companies may be subject to administrative sanctions in the form of a prohibition on marketing insurance products or sharia insurance products for certain business lines. The imposition of administrative sanctions as intended in paragraph (1) is carried out on Insurance Companies that are being subject to administrative sanctions in the form of written warnings. (3) The period for implementing administrative sanctions as intended in paragraph (1) is a maximum of 1 (one) year from the stipulation of the administrative sanctions.

CONCLUSION

Based on results of this research, it is concluded that the legal relations between the parties are related to each other. 1) The legal relationship of parties in the health insurance agreement that agent and health insurance company is a contractual relationship as evidenced by an agency agreement for health. Agents act for and on behalf of insurance companies, where agents market and sell insurance products; 2) The relationship between the insurance company and the customer is a coverage relationship which is proven by the existence of an insurance policy. The authority of an insurance agent to market an insurance product comes from an Agency Agreement. The insurance company's legal responsibility related to insurance agent errors can take the form of criminal, civil and administrative responsibility. This responsibility results from errors made by health insurance agents when carrying out their duties. There are various forms of insurance agent

errors for which the insurance company must be held responsible. This responsibility occurs because the rights and/or obligations of each party are violated.

Suggestions that can be put forward in this writing are: all health insurance agents must prove their authority by showing an agency certificate and an official letter of assignment from the insurance company along with an attachment showing a description of the duties, responsibilities and authority of the insurance agent so that proof of agency, competence and authority of the agent is clear to insurance customers. The state institution that created the law to make changes to the Insurance Law Article 28 Paragraphs (1) and (2) in this case revokes the authority of health insurance agents to receive premiums from insurance customers because this is no longer relevant with current developments. sophisticated and easy in paying premiums and the existence of this article has the potential and has often even caused losses to insurance customers due to embezzlement of premium funds by health insurance agents.

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