Jurnal Sahabat ISNU-SU (JSISNU)
(eISSN: 3064-0067)
Volume 1, Nomor 3, Desember 2024 (163-168)

The Principle of Freedom of Contract in Insurance Agreements Who Are Not the Heirs

Fikri Haikal Den Pratama[1] Mhd. Fakhry Jaidan[2] Dian Perwita Sari[3] Hasniyarti Putri[4] Andi Muhammad Yusuf Adhyaksa Konggoasa[5]
[12345]State Islamic University of North Sumatra
E-mail: fdenpratama@gmail.com jaidanfakhry4@gmail.com dianperwita369@gmail.com hasniputrihasibuan@gmail.com theassassin1912@gmail.com

Info Articles

Article History
Received: 2024-12-05
Revised: 2024-12-11
Published: 2024-12-30

Keywords:
Freedom of Contract, Insurance Agreement

Abstract

The principle of freedom of contract grants parties the autonomy to determine the terms and conditions of an agreement, including the designation of insurance beneficiaries. However, the appointment of third parties who are not legal heirs as beneficiaries often raises legal uncertainty and challenges regarding consumer protection. This study aims to analyze the application of the principle of freedom of contract in insurance agreements involving non-heir third-party beneficiaries and to examine its implications for consumer legal protection under Indonesian law. This research employs a normative legal research method using statutory, conceptual, and case approaches. The study relies on primary, secondary, and tertiary legal materials, which are analyzed qualitatively through legal interpretation and legal reasoning. The findings indicate that the principle of freedom of contract permits the designation of non-heir beneficiaries, provided that the agreement complies with the requirements of a valid contract, the principle of insurable interest, and the principle of good faith. Nevertheless, the use of standard clauses and the absence of explicit legal provisions governing third-party rights often create legal uncertainty and weaken consumer protection. Therefore, stronger regulatory oversight, greater contractual transparency, and clearer recognition of third-party rights are essential to ensuring legal certainty and balancing contractual freedom with consumer protection in insurance agreements. This study contributes to the development of Indonesian insurance law by emphasizing the need to harmonize contractual autonomy with legal safeguards for all parties involved.

I. INTRODUCTION

An insurance agreement is a form of contract that has an important role in providing financial protection against risks that individuals or groups may face. In a legal context, this agreement is governed by the principle of freedom of contract, which gives the parties the right to determine terms and conditions in accordance with their agreement. This principle is an important basis in understanding the dynamics of the relationship between the parties involved in an insurance agreement.

Freedom of contract encompasses not only the right to enter into agreements but also the right to determine the content of those agreements. However, in practice, there are situations where third parties, namely those who are not beneficiaries, are involved in insurance agreements. This raises questions about the validity and legality of the contracts, as well as the rights and obligations arising from them.

When third parties, not beneficiaries, are involved in an insurance contract, new challenges arise regarding the recognition of their rights in insurance claims. For example, if the policyholder dies, who is entitled to the insurance benefits? This situation often triggers protracted legal disputes and requires a deeper understanding of the principle of freedom of contract in the insurance context.

In Indonesia, insurance law is regulated in the Civil Code and other special regulations. However, the application of the principle of freedom of contract in insurance agreements involving third parties is often given little attention. This has the potential to create legal uncertainty that is detrimental to all parties involved.

Therefore, it is important to further explore the legal implications of freedom of contract in insurance agreements involving third parties. This research aims to analyze how these principles are implemented, as well as the challenges faced in practice.

This research will also examine the legal protection aspects for third parties involved in insurance contracts. With increasing public awareness of the importance of insurance protection, more individuals and groups are entering into these contracts, including third parties who are not beneficiaries.

Through a normative analysis approach and case studies, this research seeks to delve deeper into the dynamics of insurance contracts involving third parties. This research is expected to contribute to the development of legal science, particularly in the insurance sector.

The results of this study are expected to provide insight to policyholders, insurance agents, and other relevant parties regarding their rights and obligations under insurance contracts. Furthermore, the recommendations generated from this study are expected to serve as guidelines for better and fairer insurance practices.

Thus, this research is crucial to provide a more comprehensive understanding of the principle of freedom of contract in insurance agreements and its implications for third parties involved. This will contribute to the creation of more harmonious and mutually beneficial relationships in the insurance world.

II. RESEARCH METHODS

This study employs a normative legal research method, focusing on the analysis of legal norms contained in legislation, legal principles, doctrines, and relevant court decisions. The research examines the application of the principle of freedom of contract in insurance agreements involving third parties who are not legal heirs as beneficiaries and its implications for consumer legal protection under Indonesian law.

The research is descriptive-analytical in nature, aiming to describe the applicable legal framework while analyzing legal issues arising from the appointment of non-heir beneficiaries in insurance agreements. It adopts three approaches: the statutory approach, the conceptual approach, and the case approach. These approaches involve examining relevant legislation, legal theories and doctrines, as well as judicial decisions related to insurance disputes.

The study utilizes primary, secondary, and tertiary legal materials. Primary legal materials include the Indonesian Civil Code, Law Number 40 of 2014 concerning Insurance, Law Number 8 of 1999 concerning Consumer Protection, regulations issued by the Financial Services Authority (OJK), and relevant court decisions. Secondary materials consist of legal textbooks, journals, theses, dissertations, and scholarly articles, while tertiary materials include legal dictionaries and encyclopedias.

Legal materials are collected through library research and analyzed qualitatively using legal interpretation and legal reasoning to produce systematic conclusions regarding the implementation of the principle of freedom of contract and its implications for consumer legal protection in Indonesia.

III. RESULTS AND DISCUSSION

A. Application of the Principle of Freedom of Contract in Insurance Agreements Involving Third Parties Who Are Not Heirs

The principle of freedom of contract, as regulated in Article 1338 paragraph (1) of the Civil Code (KUHPerdata), provides flexibility for parties to make agreements according to their wishes, as long as they do not conflict with the law, public order, and morality. In the context of insurance agreements, this principle allows the insurer and the insured to agree on the terms and conditions that govern their contractual relationship.

The application of the principle of freedom of contract in insurance agreements involving third parties who are not heirs creates its own dynamics. This third party can be appointed as an insurance beneficiary through an agreement between the insurer and the insured. This is in line with the principle that agreements made legally apply as law to those who make them.

However, the designation of a third party who is not an heir as an insurance beneficiary must comply with the principle of insurable interest. This principle requires that the beneficiary have a legitimate interest in the insurance object to prevent speculation or gambling in the insurance agreement.

Furthermore, the principle of good faith is also an important foundation in insurance contracts. Parties are required to act honestly and openly in disclosing relevant information related to the agreement. Failure to comply with this principle may result in the cancellation of the agreement or the denial of the insurance claim.

In practice, the designation of a third party, other than the beneficiary, as the beneficiary of the insurance must be expressly stated in the insurance policy. This ensures that the third party's rights are recognized and legally protected. Without a clear designation, disputes can arise regarding who is entitled to receive insurance benefits.

It should be noted that while the principle of freedom of contract provides flexibility, there are limitations that must be observed. Agreements must not conflict with applicable laws and regulations. In the context of insurance, this means that the designation of beneficiaries must comply with the legal provisions governing insurance and contracts.

Furthermore, insurance contracts involving third parties must meet the requirements for a valid contract as stipulated in Article 1320 of the Civil Code, namely, agreement between the parties, capacity to enter into a contract, a specific matter, and a lawful cause. Fulfillment of these requirements ensures that the contract is valid and legally binding.

In the event of a dispute regarding the designation of a third party as an insurance beneficiary, the court will review the agreement based on the principle of freedom of contract and other principles of contract law. Therefore, it is important for the parties to draft the agreement clearly and completely to avoid adverse interpretations later on.

Thus, the application of the principle of freedom of contract in insurance agreements involving third parties who are not beneficiaries allows flexibility in determining beneficiaries. However, this must be done in accordance with applicable legal principles, including insurable interest and good faith, and must ensure that the agreement does not conflict with applicable laws and regulations.

Additionally, it's important to explore how third parties can be protected in insurance contracts. One approach is to include provisions explicitly recognizing third-party rights in the contract. This can help reduce legal uncertainty and provide greater protection for the third parties involved.

Another recommendation is to improve legal understanding for policyholders and insurance agents regarding their rights and obligations under insurance contracts. With a better understanding, they can design fairer and more beneficial agreements for all parties, including third parties. Education and training on the legal aspects of insurance can also help reduce potential future disputes.

One of the main challenges in implementing the principle of freedom of contract is the legal uncertainty regarding the rights of third parties. In practice, many insurance agreements use standard clauses that limit the rights of the insured and third parties. Nevertheless, there are still elements of freedom of contract that allow the parties to negotiate and amend the agreement. This demonstrates that despite limitations, the principle of freedom of contract can still be implemented.

Legal protection for third parties in insurance contracts is also a crucial concern. In many jurisdictions, insurance laws do not explicitly address the rights of third parties, leaving them often in a vulnerable position. Therefore, it is crucial for policyholders and insurance companies to consider the legal implications of their contracts, especially when third parties are involved.

Overall, the application of the principle of freedom of contract in insurance agreements involving third parties who are not heirs requires special attention. Although this principle provides flexibility in formulating agreements, legal challenges that arise must be addressed to protect the rights of all parties involved. With the right approach, it is hoped that insurance agreements can become a more effective instrument in providing financial protection.

Finally, further research is needed to explore the legal implications of freedom of contract in the insurance context. This will aid in the development of better policies and practices within the insurance industry, as well as provide better protection for third parties involved in insurance contracts.

B. The Influence of the Principle of Freedom of Contract on Consumer Protection in Insurance Agreements

The principle of freedom of contract, as stipulated in Article 1338 of the Civil Code (KUHPerdata), grants the parties the right to freely determine the content, form, and subject of the agreement, as long as it does not conflict with the law, public order, and morality. In the context of insurance contracts, this principle allows policyholders and insurance companies to agree on terms and conditions, including the designation of beneficiaries who are not heirs. However, this freedom often creates inequalities in consumer protection, especially for parties who do not understand the contractual clauses.

Consumers in insurance contracts, who are often in a weaker position than insurance companies, are at risk of being disadvantaged by standard clauses that tend to favor the service provider. Under Article 18 of Law Number 8 of 1999 concerning Consumer Protection, standard clauses that include transfers of responsibility, limitations on the insurance company's liability, or other provisions detrimental to consumers are declared invalid. However, in practice, many consumers are unaware of the existence of these clauses, resulting in losses in the event of a dispute.

Furthermore, when designating non-heir beneficiaries, freedom of contract can trigger conflicts with legal heirs who feel their rights have been violated. In this case, consumer protection becomes a crucial issue to ensure that beneficiaries have a strong legal basis for their rights under the agreement. Therefore, the role of regulators, such as the Financial Services Authority (OJK), is crucial in ensuring that insurance companies comply with consumer protection principles, including information transparency and fairness in contracts.

Legal sources and policies in Indonesia, such as the Civil Code and the Consumer Protection Law, serve as a crucial basis for ensuring a balance between freedom of contract and the protection of consumer rights. Strict law enforcement against violations of standard clauses and consumer education about their rights under insurance contracts can be strategic steps to mitigate the negative impacts of the principle of freedom of contract.

The principle of freedom of contract is a fundamental principle in contract law which gives parties the freedom to determine the content and terms of the agreements they make. In the context of insurance agreements, this principle has several significant influences on consumer protection:

1. Independence in Determining Agreement Terms

Consumers (insured) have the right to choose and negotiate the terms of their insurance agreement. This includes choosing the type of insurance, premium, and desired benefits. This independence gives consumers the opportunity to obtain protection that meets their needs and capabilities.

2. Potential for Abuse of Power

While the principle of freedom of contract provides flexibility, it can also pose a risk of abuse by insurance companies. For example, companies may draft clauses that disadvantage consumers, such as provisions that complicate claims. Therefore, regulations are needed to limit unfair provisions.

3. Transparency in Contracts

Consumer protection can be enhanced by requiring clear and transparent information to be presented in insurance contracts. The principle of freedom of contract encourages insurance companies to provide comprehensive information about the products they offer, allowing consumers to make informed decisions.

4. Obligations of Insurance Companies

While consumers have the freedom to contract, insurance companies also have an obligation to uphold the principle of fairness. They must ensure that the terms of the agreement not only benefit them but also provide adequate protection for consumers.

5. Dispute Resolution Mechanism

The principle of freedom of contract also relates to dispute resolution. In insurance contracts, it is crucial to have a fair and accessible resolution mechanism for consumers in the event of disputes, particularly regarding claims. This is an essential element of consumer protection within the context of freedom of contract.

6. Regulation and Supervision

To protect consumers, regulations governing insurance practices and ensuring that insurance companies do not abuse their freedom of contract are necessary. Oversight by relevant authorities is crucial to maintaining a balance between freedom of contract and consumer protection.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The application of the principle of freedom of contract in insurance agreements involving third parties who are not beneficiaries presents complex and challenging dynamics. While this principle allows the parties to formulate terms and conditions as agreed, the involvement of third parties often creates legal uncertainty regarding their rights and obligations. The absence of clear provisions regarding third-party rights in insurance agreements can result in protracted disputes and inadequate legal protection.

Through qualitative analysis and case studies, this research reveals that it is crucial for policyholders and insurance companies to understand the implications of each provision included in their agreements. Recommendations to include clauses that explicitly recognize third-party rights and improve legal awareness among policyholders and insurance agents are crucial steps towards creating fairer and more transparent agreements.

Thus, this study underscores the need for further attention to the application of the principle of freedom of contract in the insurance context, as well as the importance of protecting third-party rights. Collaborative efforts among stakeholders in the insurance industry, including policymakers, are expected to improve legal protection and create a more conducive climate for all parties involved in insurance contracts.

REFERENCE LISTAN

Atmoko, Dwi. (2022). Penerapan Asas Kebebasan Berkontrak Dalam Suatu Perjanjian Baku, Binamulia Hukum

E, Ernawati D. (2009). Penerapan Asas-Asas Hukum Asuransi Dalam Perjanjian Asuransi Kendaraan Bermotor Di Pt. Asuransi Raksa Pratikara Di Wilayah Surakarta (Doctoral Dissertation, Program Pascasarjana Universitas Diponegoro).

Harianto, Dedi. (2016). Asas Kebebasan Berkontrak: Problematika Penerapannya Dalam Kontrak Baku Antara Konsumen Dengan Pelaku Usaha." Jurnal Hukum Samudra Keadilan

Mahendar, Fahdelika, And Christiana Tri Budhayati. (2019). Konsep Take It Or Leave It Dalam Perjanjian Bakum Sesuai Dengan Asas Kebebasan Berkontrak. Jurnal Ilmu Hukum: Alethea

Muhammad, Abdulkadir. (2002). Hukum Asuransi Indonesia, Cet. 3, Bandung: Citra Aditya Bakti.

Prahita, Astri Putri. (2022).Pembatasan Penerapan Asas Kebebasan Berkontrak Dalam Kontrak Baku. Diss. Universitas Islam Indonesia

Putri, R. R. S. A. I. (2024). Penerapan Prinsip Subrogasi Dalam Perjanjian Asuransi Pengangkutan Atas Soehaiya, Nintha. Analisis Yuridis Penerapan Prinsip Insurable Interest Dalam Praktik Asuransi Jiwa (Studi Pada Pt. Prudential Life Assurance Cabang Medan). Diss. Universitas Sumatera Utara

Simanjuntak, Friska Martalena. (2012). Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Kerja Waktu Tertentu Di The Forest Trust (Non-Profit Organization) Kantor Perwakilan Indonesia. Diss. Diponegoro University

Vandawaty, Zahry. (2015). Perlindungan Hukum Tertanggung Dan Tanggung Jawab Penanggung Dalam Perjanjian Asuransi Jiwa. Surabaya: Revka Petra Media