

## ANALYSIS OF THE THEORY OF JUSTICE IN INSURANCE BUSINESS IN INDONESIA

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### Abstrak:

In carrying out its function as a financial protector in the future, the insurance business must be based on justice to create a healthy relationship between customers and insurance companies. Justice in the insurance business is the main foundation of a healthy and useful insurance industry in Indonesia. If there is no justice, then public confidence can be disturbed, and trust in the insurance business can be reduced due to the perception of injustice. Justice is very necessary because the low level of understanding of the Indonesian people about insurance products is the main cause of injustice in the insurance service business. This situation is because insurance agents who do not have integrity do not explain the contents of the policy transparently to prospective customers. Based on the above thoughts, the main problem is, first, is the application of the Indonesian insurance agreement justice standard in accordance with the theory of justice? Second, How is the Implementation of Theory in Overcoming Conflicts Between Insurance Companies and Customer Justice in Insurance Companies?

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## INTRODUCTION

The emergence of the insurance business in Indonesia began in the 1840s. During this period, port cities such as Batavia and Semarang experienced an increase in trade transactions, especially plantation products. Goods and ships carrying them were vulnerable to accidents during sea travel. This could be due to rotting, robbery, fire, or waves. Along with that, insurance companies emerged, offering coverage (underwriter) for goods and ships carrying them.

Insurance or coverage has been stated in its standard and clear definition as stated in the Commercial Code (hereinafter abbreviated as KUHD) Article 246, namely: "Insurance or coverage is an agreement by which an Insurer binds himself to an insured by accepting a premium to provide compensation to him because between the insurer and the insured who bind themselves to replace the losses agreed upon at the time of the agreement's conclusion." In Article 255 of the Commercial Code which reads "insurance must be given in writing with a deed called a policy." Based on the provisions in the Article, the form of insurance itself must be in writing with a deed called a policy. The insurance policy itself has been regulated in Articles 255, 256, 257, and 258 of the Commercial Code (KUH Dagang); the policy can be used as a means of proof; this is emphasized by Article 258 of the Commercial Code, which states that to prove the closing of the agreement, written proof is required. A policy is perfect evidence. Without a policy, proof will be difficult and limited.

Law of the Republic of Indonesia Number 2 of 1992, which has been replaced by Law Number 40 of 2014 concerning Insurance Business, formally defines insurance or coverage as a contract between the insurance party and the customer. In this contract, the insurer, after receiving premium payments, is obliged to provide compensation to the insured for losses, damages, loss of potential profits, or legal obligations to other parties that may arise due to unforeseen events. This definition also includes payments based on the life or death status of the insured individual.



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The function of the policy in an insurance agreement is as follows:

- 1) As a basis for implementing the agreement,
- 2) As written evidence,
- 3) As a basis for claims in the event of a dispute,
- 4) As a basis for calculating compensation.

Therefore, the function of the policy for the insurer as the party obliged to submit the policy to the insured is:

- 1) As written evidence of the guarantee to the insured to pay compensation or claims suffered by the insured;
- 2) As authentic evidence to reject claims for compensation or claims filed by the insured or heirs if the claim filed does not comply with the conditions stated in the policy.

The function of the policy for the insured is of course an obligation for the insurer that must be fulfilled towards the insured, namely:

- 1) As written evidence of the insurer's guarantee to replace losses or claims;
- 2) As authentic evidence to sue the insurer if negligent or does not fulfill its guarantee.

The insurance agreement between the customer and the insurance company arises because of a contractual agreement in the policy. From the process of making, the policy tends not to reflect the principle of equality because the insured or customer is not given the opportunity to negotiate, where the policy has been issued first. From the content of the agreement in the policy, it tends to benefit the insurance company so that there is a disparity or injustice between the rights and responsibilities of the parties. This means that the company tends to protect its interests in such a way by enforcing clauses that reduce the rights of the policyholder.

Referring to the background that has been described, the author is interested in researching this problem and discussing 2 issues, namely 1. Is the implementation of the Indonesian insurance agreement justice standard in accordance with the theory of justice? 2. How is the Implementation of the Theory of Justice in Resolving Conflicts Between Insurance Companies and Customers in Insurance Companies?

## METHODS

The research methodology applied in this study is normative juridical, which is implemented through literature study. This study primarily examines secondary data including laws and regulations, court decisions, and other legal documents, as well as research results, assessment results, and relevant references in the context of problem formulation. This normative juridical approach includes an analysis of legal systematics and the level of legal synchronization. According to Peter Mahmud Marzuki, normative legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. Normative juridical research is also called doctrinal research, where law is often conceptualized as what is written in laws and regulations (law in books) or conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate.

## RESULT AND DISCUSSION

**Is the implementation of the Indonesian insurance agreement fairness standard in accordance with the theory of justice?** The definition of an agreement based on 1313 of the Civil Code is an event where someone promises to another person or where two people are mutually bound to do something. Based on this definition, a relationship arises between the two people called



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an agreement, the agreement issues an agreement between two people or two parties who make it. Agreements and justice are bound to ensure that each party involved in the agreement is treated fairly and equally because justice is an important foundation for a mutually binding agreement; if there is no justice in an agreement, it can cause conflict in society.

Article 1 Number 1 of Law No. 40 of 2014 explains that the definition of insurance is an agreement where the insurer binds himself to the insured by receiving a number of premiums to provide compensation to the insured for a risk of loss, damage, or loss that may be experienced due to unexpected events. Therefore, insurance agreements require standards of justice to establish a balanced relationship between insurance companies and policyholders. People use insurance as a way to minimize the risks that arise due to unexpected events, insurance companies generally use a standard agreement system in making insurance policies. A standard agreement is a form of agreement in the realm of contract law that contains certain conditions that are only made by one of the more dominant parties. Insurance is often considered unfair because insurance agents sometimes do not explain in a complex manner the contents of the insurance policy, resulting in a lack of public understanding in interpreting the articles contained in the agreement policy, this causes injustice in the relationship between customers and insurance companies. Insurance policies require the principle of justice because it is the basis for insurance agreements and requires everyone to have the same rights so that everyone may not take advantage of more than their fair share and may not harm others. The principle of justice will provide a guarantee of justice to humans as legal subjects so that they obtain the rights and obligations they should.

Justice is the concept of balance between rights and obligations and the application of fair moral law. Justice is always related to law; John Rawls understands justice as "Justice as fairness." Rawls explains that everyone has the same basic rights and opportunities and that any inequality that exists benefits those who are least fortunate. An adequate theory of justice, namely a theory that is able to accommodate social cooperation that will eventually support the formation of an orderly and regular society. John Rawls developed the concept of justice with a treaty approach. Through the treaty approach, the elements of equality of position, freedom and rationality will be fulfilled.

The concept of justice, according to John Rawls, is that justice must be upheld if the state implements the principle of justice, namely that everyone should have the same right to obtain basic liberties, and socio-economic differences should provide great benefits for those who are most disadvantaged and are related to positions and positions that are open to everyone based on equal opportunities. So, justice, according to John Rawls, is a measure that must be given to achieve a balance between personal interests and common interests. John Rawls is a supporter of formal justice, who consistently places the constitution and law as the basis for implementing individual rights and obligations in social interactions. Justice that is based on regulations and even formal administration is important because it basically provides a minimum guarantee that everyone in the same case must be treated equally.

There is no single article that explicitly applies the standard of fairness in insurance, but there are several articles in the Commercial Code that contain the principle of interest. This article is also considered to contain the principle of balance, as it is known that the purpose of the principle of balance is to create a fair and balanced relationship between the insurance company and the policyholder.

- a) Article 250 KUHD: "If the insured has no interest in the insured object, then the insurer is not obliged to pay the claim for compensation."
- b) Article 252 KUHD: "If the object has been insured at full value, then a second insurance for the same period and the same danger is not permitted with the threat of cancellation."



- c) Article 253 KUHD: "Insurance that exceeds the actual value or interest is only valid up to the amount of the actual value of the object. If the entire value of the object is not insured, then in the event of a loss, the insurer is only bound by the balance between the insured and uninsured parts."
- d) Article 274 KUHD: "If the value of the insured object is stated in the policy, then the judge has the authority to order the insured to determine the actual value of the object if the insurer states the reason that the value of the object is considered too high"
- e) Article 277 KUHD: "If several insurances are made for an object in good faith, while the first insurance is at full value, then the subsequent insurers released"
- f) Article 279 of the Criminal Code: "If the insured releases the previous insurers, then he is deemed to replace them for the same amount and in the same order."
- g) Article 284 of the Criminal Code: "The insurer who has paid the loss to the insured acquires the insured's rights against a third party regarding the loss; the insured is responsible for any actions that could harm the insurer's rights against the third party"

John Rawls' theory of justice explains how a just society can be built by emphasizing equal freedom. Rawls created a society where everyone has the opportunity to thrive and where those most in need are protected. This theory is closely related to the concept of insurance, which has a vision of a just and equitable society, but in fact, insurance in Indonesia has not met the standards of justice according to the theory of justice in the insurance legislation regulations also do not explicitly explain the standards of justice and the lack of transparency from insurance agents to customers which results in a veil of ignorance contained in John Rawls' theory of justice which means that customers do not know the complex contents of the insurance policy which risks a lack of customer understanding of the insurance agreement which can cause customers not to meet the claim requirements.

How is the Implementation of Justice Theory in Resolving Conflicts Between Insurance Companies and Customers in Insurance Companies?

The insurance industry plays an important role in providing financial protection for the community, both in terms of health, life, and other assets. However, it is not uncommon for cases of insurance policy claim rejections to occur which cause dissatisfaction and conflict between customers and insurance companies. In many cases, customers feel that the rejection is unfair or does not comply with the provisions stated in the policy. Claim rejections like this can cause unrest in the community and reduce the level of trust in the insurance industry.

To resolve conflicts between customers and insurance companies, the Indonesian Insurance Company Association established the BMAI / Indonesian Insurance Mediation and Arbitration Agency under the supervision of the Indonesian Insurance Council. The existence of the Indonesian Insurance Mediation and Arbitration Agency (BMAI), which was established in 2006, also received formal legitimacy through a Joint Decree (SKB) issued on July 5, 2006. 4 Ministers signed the SKB, namely the Minister of Finance of the Republic of Indonesia Sri Mulyani Indrawati; the Minister of Law and Human Rights of the Republic of Indonesia, Hamid Awaluddin; the Minister of Trade, of the Republic of Indonesia, Mari Elka Pangestu, and the Minister of State for Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Suryadharma Ali. The main objective of establishing BMAI is to provide dispute resolution services between insurance company entities and customers independently, impartially, efficiently, and at a relatively low cost outside the courts.

However, based on the latest information developments, the Indonesian Insurance Mediation and Arbitration Agency (BMAI) has stopped accepting new insurance claim dispute complaints as of January 1, 2021. The BMAI operational period was given a transition period ending on December 31, 2020 with the aim of resolving all previously registered disputes. This is in accordance with the Financial Services Authority Regulation (POJK) Number 61/POJK.07/2020 concerning the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK). Based on this regulation, LAPS SJK was formed as the only alternative dispute resolution institution in the financial services sector, replacing the role and function of the six previous LAPS institutions, including BMAI. The replacement of BMAI's duties by LAPS SJK in the insurance sector aims to create one alternative dispute resolution institution (LAPS) that covers the entire financial services industry, such as banking, capital markets, insurance, pension funds, and fintech.

LAPS SJK plays an important role in resolving disputes between insurance companies and customers. The conflict resolution system provided, especially mediation and arbitration, is clearly able to produce a more immediate and efficient resolution than through legal channels. However, difficulties arise in resolving disputes involving a large number of policyholders, for example, unit link cases, which require strengthening the capacity and resources of LAPS SJK. Furthermore, the level of customer satisfaction with the outcome of dispute resolution still varies, indicating the urgency to improve transparency and communication during the process. Therefore, proposals for improvement, such as capacity building, regular training, and introduction of conflict resolution mechanisms, are expected to optimize the effectiveness of LAPS SJK in resolving insurance disputes and strengthening consumer security in Indonesia. Therefore, in order to improve insurance customer satisfaction, LAPS SJK needs to improve transparency, communication, and fairness in handling problems because the legal relationship between insurance companies and customers is stated in the policy, justice is essential in the insurance system, and its handling requires justice and a theoretical basis for justice. The most appropriate theory of justice to handle cases of conflict between insurance companies and customers is Aristotle's theory of justice.

At the heart of Aristotle's theory of justice is the idea that justice means giving people what they deserve or deserve. For Aristotle, justice is not simply an equal distribution but a proportional distribution that takes into account the virtues and merits of each individual.

Aristotle distinguishes between two classes of justice in his *Nicomachean Ethics*. These are called general justice and particular justice. Distributive justice and corrective justice are two types of special justice available to society. The fair distribution of resources and benefits according to each individual's contribution and needs is the focus of distributive justice. Corrective justice, on the other hand, is concerned with correcting injustices that have occurred by imposing punishments that are proportionate to the crimes committed. Particular justice recognizes that justice is not just about applying the law equally to all, but also about creating balance and equality in the living conditions of individuals and groups in society. This could involve progressive fiscal policy where those with more means pay more taxes to fund social programs that help those with less means. In the case of corrective justice, it could be about restitution or compensation to those who have suffered through injustice or injustice.

The concept of corrective justice put forward by Aristotle, is a strong philosophical basis for the role and function of LAPS SJK. This institution seeks to restore injustice that may arise in the relationship between insurance companies and customers through a fair, impartial mechanism and aims at compensation for losses in accordance with a valid agreement. Although the principle of distributive justice is more comprehensive, an understanding of the allocation of risks and benefits

in insurance agreements is also an essential background in handling disputes by LAPS SJK. Corrective justice does not look at the social or financial standing of the disputing parties but rather focuses on evidence of losses and breach of contract. This is in line with the principle of LAPS SJK which should be neutral and unbiased in handling disputes between insurance companies that are generally more economically established and customers.

However, LAPS SJK is more focused on resolving disputes that have occurred (corrective justice), the principle of distributive justice is also relevant in understanding the root of the problem. An insurance policy is the content of an agreement that regulates the distribution of risks and benefits. Disputes often occur when customers feel they are not getting the benefits that should be commensurate with the premium contributions that have been paid. LAPS SJK, in its mechanism, will evaluate whether the distribution of benefits (claims) has been carried out properly in accordance with the provisions of the policy.

In this case, the theory of justice put forward by Aristotle has played its role well in handling conflicts between insurance companies and customers, however, the LAPS SJK organization needs to strengthen or revise communication and transparency in its management so that insurance customers are able to understand each of their problems.

## CONCLUSION

John Rawls' concept of justice explains that the way to realize a just society is to prioritize equal freedom. Rawls initiated a society where every person has the opportunity to develop and where those who need support most are protected. This theory is very relevant to the idea of insurance which has a vision of a just and fair society, but in fact, insurance in Indonesia has not met the level of justice according to the theory of justice. The legal basis for insurance also does not explicitly describe the standards of justice and the low openness of insurance agents to customers, which creates a veil of ignorance in John Rawls' theory of justice, which suggests that customers do not understand the complex contents of the insurance policy which has the potential for minimal customer understanding of the insurance agreement which can cause customers not to meet claim requirements.

LAPS SJK has an important role in resolving disputes between insurance companies and customers. The available conflict resolution systems, especially mediation and arbitration, produce more immediate and efficient resolutions than through legal channels. LAPS SJK focuses more on resolving disputes that have occurred (corrective justice), but the principle of distributive justice is also related to understanding the root of the problem. An insurance policy is the content of an agreement that regulates the distribution of risks and benefits. Disputes often occur when customers feel they have not received a fair share of the profits commensurate with the premium contributions they have paid. LAPS SJK, in its mechanism, will evaluate whether the distribution of benefits (claims) has been carried out fairly in accordance with the provisions of the policy. In this case, the theory of justice proposed by Aristotle has carried out its function well in resolving conflicts between insurance companies and customers, however, the LAPS SJK organization needs to strengthen or revise communication and transparency in its management so that insurance customers are able to understand each of their problems.

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