

# The Application of Good Faith Principles in Health Insurance Agreement (Case Study: Allianz Life Insurance Indonesia)

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## ABSTRACT

The insurance business provides guarantees for the protection of the insured, by taking risks that may occur to the insured in the future. However, insurance often misused with an aim of taking profits. Which contrary to the nature of insurance which in essence explains that insurance is not to gain profit. The main problem is the application of Article 251 KUHD which regulates the principle of good faith in the health insurance agreement by Budi Arman alias Budi Wijaya as the insured person to PT. Asuransi Allianz Life Indonesia Services. The research method used in this study uses normative legal research. In this study the type of data collected is secondary data, using primary legal materials, secondary legal materials and non-legal materials. In this case the insured uses fake ID cards to cover the coverage, and submit health insurance claims to the insurance company. Insurers carry out their obligations to pay claims, but arises suspicion of the insured due to claims made several times in a relatively short time, then it is proven that the insured uses fake ID cards. This settlement is carried out through the courts to find solutions to these problems. The conclusion of this research is that the insured does not apply the principle of good faith and that the legal settlement in the insurance case does not only cover the civil aspect but also includes the criminal aspect if there is an element of criminal action.

**Keywords:** Agreement, Utmost good faith principle, Health Insurance

## 1. INTRODUCTION

Human lives are always faced with uncertainty, in every activity it carries risks because it cannot be known with certainty about what can happen in the future. That risk may come from nature, behavior, human damage, property damage, or financial loss that can occur in the near or long term. The amount of damage or loss suffered will vary, depending on the cause and effect happen. However, that does not mean that there is no attempt to reduce or anticipate uncertainty. [1]

In a book entitled *Hukum Pertanggung jawaban dan Perkembangan*, Prof. Emmy Pangaribuan Simanjuntak, stated that every human who faces the possibility of losing his property due to various reasons, they are said to be facing a risk. Furthermore, it is said that risk is a possibility of facing or overwritten a loss. Thus, a risk in general is a loss that can occur in the future. [2]

Risk is definitively interpreted as the result of a harmful or harmful action or action. One way that humans can do when

faced with risk, is with insurance. Insurance has now become an important role in ensuring human life to be protected from loss when risks occur. The insurance industry in Indonesia is guided by Code of Commercial Law and Law Number 40 of 2014 concerning Insurance. Insurance is also defined in legal terminology as an agreement which must therefore also be subject to the legal conditions of the agreement governed by Article 1320 of the Civil Code. The insurance agreement involves 2 (two) parties, namely the guarantor and the insured. The insured can insure himself and also insured others, for example parents can insure their children. While the guarantor is the party that bears the insurance or accepts the transfer. There are various types of insurance in Indonesia, but in this study the type of insurance that is discussed is about health insurance. Generally, health insurance is an additional insurance product for life insurance. But the promised risk is different from life insurance, in health insurance is if the insured suffers from illness. Health insurance is a type of

insurance that provides health benefits to the insured if the insured suffers from illness in the form of an amount of money to pay for care and or treatment. In other words, health insurance is needed as coverage that can take over the risk of one's health costs.

In insurance there are principles that apply to provide security to the interests associated with the insurance agreement, but this study specifically discuss the principles of good faith. Forms of violation of the principle of good faith that often occurs is hiding facts by providing information or information that is not honest, cheating (fraud) such as the insured who uses fake documents or letters to apply for insurance.

As the case discussed in this study, where this case began when Budi Wijaya as the insured, several times filed a health insurance claim to the Allianz Insurance Company as the guarantor, in the same way which is reimburse. On November 24, 2015 based on receipts from the Satyanegara Hospital in Sunter with the amount of Rp. 9,000,000 (nine million rupiah) and approved by Allianz. Furthermore, on January 19, 2016 Budi Wijaya again filed a claim with a receipt from the Husada hospital in Mangga Besar. Because the claim submitted was not fair and was made several times in a near amount of time, the Allianz claims section did a double check on the insured form data. After checking, based on a letter from the Head of the Tangerang Regency Population and Civil Registration Service Number: 470 / G-DKPS on May 9, 2016, it turns out that the data was not found and is not in the population database at the Tangerang Regency's Population and Civil Registration Service. As a result of the actions of the insured, PT Asuransi Allianz Life Indonesia suffered a loss of Rp. 9,000,000 (nine million rupiah). Feeling disadvantaged, PT Asuransi Allianz Life Indonesia reported Budi Wijaya to the Metro Jaya police, and Budi Wijaya had been found guilty of the use of fake letters which resulted in losses in the criminal Number. 914 / Pid.B. / 2018 / PN.Jkt.Sel.

In Article 27 paragraph (1) of the 1945 Constitution essentially explains that, all citizens have the same position in the law and are obliged to uphold the law without exception. [3]

Upholding the law is also defined as complying with the law, namely compliance caused by the awareness and sincerity to obey the law. So if there are citizens who do not uphold or obey the law it can be called committing a violation of the law. In such cases it shows that the insured has had a fraudulent intention from the start. Cheat or fraud that occurs within the scope of insurance companies is regulated in the Criminal Code (KUHP). Regarding fraudulent acts in insurance, it can be linked to Article 263 of the Criminal Code concerning Falsification of Letters. Of course, the violation shows the lack of goodwill on the part of the insured and causes legal problems.

Based on the background of the problem that has been discussed above, there are two issues to be discussed namely:

1. How is the application of the principle of good faith in a health insurance agreement (Case Study: PT Asuransi Allianz Life Indonesia)?

2. How is the legal settlement of not implementing the principle of good faith in the health insurance agreement?

## **2. ANALYSIS**

### ***2.1. The Application of Good Faith Principle In a Health Insurance (Case Study: Allianz Life Insurance Indonesia)***

Definition of insurance according to Law Number 40 of 2014 concerning Insurance for Article 1 paragraph (1) is an agreement between the parties that is the guarantor and the insured, where the guarantor receives a number of premiums in return for granting compensation to the insured due to a loss that occurs as a result of an uncertain time. [4] Based on this explanation, it can be concluded that the insurance agreement, is an agreement so that it follows the provisions of the agreement contained in the Code of Civil Law. Similar to an agreement in general, insurance agreements are valid if they meet the elements stipulated in Article 1320 of the Indonesian Civil Code. Four conditions for the validity of an agreement, are: [5]

1. The agreement of those who bound themselves.

In this insurance agreement, the parties that bind themselves are the guarantor and the insured. The guarantor is represented by an insurance agent (PT. Asuransi Allianz Life Indonesia) and the insured party (Budi Arman alias Budi Wijaya). The agreement of the parties to commit themselves can be seen with the issuance of Life Insurance Policy type Tapro Allisya Protection Plus and additional Flexicare Health Insurance Number: 000036129747 / B2037 on behalf of the insured Budi Wijaya.

2. The ability to make an engagement.

As stated in Article 1330 of the Indonesian Civil Code, a Capable is an adult, not under authority, and is not prohibited by a statutory regulation to make certain agreements. In closing the insurance agreement, both insurance agent Allianz and Budi Arman alias Budi Wijaya meet the competent elements.

3. A certain thing.

That the object to be promised in an agreement must be clear so that the rights and obligations of the parties can be determined. In this case the object of the agreement is the health of the insured namely Budi Arman alias Budi Wijaya.

4. A lawful cause.

A lawful cause aims that the agreement made does not conflict with law, public order and morality. In this case the insured closes the insurance agreement with the intention to take advantage of the guarantor, this is evidenced by the insured who uses fake ID cards in carrying out the agreement proving that the insured does not meet the element of a halal cause.

The existence of the insured's health insurance is an additional insurance product from life insurance, confirmed by the issuance of Life Insurance Policy type Tapro Allisya Protection Plus along with additional Flexicare Health Insurance, Number: 000036129747 / B2037 on behalf of Budi Wijaya. The policy issued as a written agreement

between the parties covers the transfer of risk and the applicable conditions.

In an insurance agreement, the principle of good faith becomes very important in the occurrence of the agreement because it involves the rights and obligations of the parties. In this principle, the insured is required to provide clear, accurate and thorough information regarding all important facts related to him and not to try to take advantage of the guarantor on purpose. Thus, the insured must not hide or falsify facts about him, bearing in mind this is related to the willingness of the insurer to take over the insured's risk. This principle is an implementation of Article 1320 and Article 1338 paragraph (3) of the Civil Code which states that the agreement made by the parties must be based on legal reasons and must be implemented in good faith. When you want to make insurance closure, the prospective insured and the guarantor must have good intentions in meeting the requirements for submitting an insurance agreement.

However, in fact the principle of good faith is often violated because of the desire to gain profit through dishonest means or fraud committed by the parties in the insurance business. Fraud in insurance or referred to as insurance fraud, can be interpreted as all kinds of fraud committed by insurers whether the insured, insurance agents, or the guarantor himself who aims to take advantage of financially dishonest and illegitimate.

In the OJK circular No.46 of 2017 essentially states that Fraud is a deliberate act of deviation aimed at tricking, cheating, or manipulating which results in other parties suffering losses while the offender obtains profits directly or indirectly.

Referring to the results of an interview with Mr. Kristian, he explained that at the theoretical level, the concept of the principle of good faith is divided into at least 2 (two) forms, namely objective good intentions and subjective good intentions. Good intentions are good intentions regarding the object of the agreement and the legal conditions of the agreement (article 1320 BW). Meanwhile, subjective goodwill is good faith from the parties as the people who will carry out the agreement.

Thus, the insurance agreement or insurance agreement becomes valid if it meets the provisions in Article 1320 of the Indonesian Civil Code, and in its application must comply with Article 1338 paragraph (3) of the Indonesian Civil Code, that an agreement must be implemented in good faith. The regulation of good faith aims to provide protection for the parties in the agreement, especially the injured party, in this case the guarantor. Where the insured should provide true information or information about the facts about him. The insured cannot determine the conditions contained in the insurance agreement, because the conditions have been determined by the insurance company itself, the insured can decide whether or not to agree to the contents of the agreement prior to the agreement.

## ***2.2. Legal Settlement of Non-Goodwill Principles in the Health Insurance Agreement***

In insurance agreements, problems often arise as a result of not implementing the principle of good faith. Including not carrying out obligations that have been agreed upon or not carrying out the conditions written in the agreement. Problems that can occur from the guarantor who do not fulfill their obligations, for example, that is not paying a claim, while from the insured, for example, the insured does not carry out his obligation to pay premiums, falsify information or conceal information, or commit acts against the law.

In the event that an insurance party intentionally violates the law, it is either done by the guarantor or the insured to take advantage of other parties known as insurance fraud, or fraud in insurance. Generally, fraud in insurance occurs in the types of travel insurance, fire, motor vehicles and health insurance because the claim method is relatively easy. The usual mode is carried out by actors related to claims engineering, policy counterfeiting, falsification of identity, and so forth.

As discussed in the previous point, the existence of fraud in insurance proves that there are parties who do not carry out good faith. Then there is a legal settlement if there is a problem. If a dispute occurs or problems arise in insurance, it can be resolved through a court or outside the court, namely through alternative dispute resolution such as mediation, adjudication, or arbitration. The determination depends on the parties and basically stated in the policy, in accordance with the provisions in the Decree of the Minister of Finance Number. 422 / KMK.06 / 2003 that all insurance policies are required to include a dispute or dispute resolution clause.

Dispute resolution through the court is not only for insurance dispute resolution, but also for civil cases and other criminal cases. Another way to settle an insurance dispute outside the court is arbitration which is based on an arbitration agreement made in writing by the parties to the dispute. Arbitration is a procedure for resolving disputes outside the court based on an agreement of related parties which is submitted to a third party (arbitrator) to make a decision. One of the bodies that handle insurance dispute arbitration is BMAI (Indonesian Insurance Mediation and Arbitration Agency).

Before going through the arbitration and court stages, the parties to the dispute can resolve it through mediation. Mediation is a process to bring together disputing parties with the aim of resolving the problem by deliberation to reach an agreement that involves a mediator or a neutral third party or does not have the competence to make decisions. But in this case, it cannot be resolved through BMAI, because it is not the authority of BMAI.

In this case, the insured did not carry out the principle of good faith regarding unlawful acts. In civil law, acts against the law are regulated in Article 1365 of the Civil Code, that every act that violates the law and causes harm to others, requires the person who caused the loss to replace the loss. However, the legal settlement of not implementing good

faith not only covers civil aspects but also includes criminal aspects. Settlement of disputes carried out by the guarantor in this case is carried out through the District Court, an act committed by Budi Arman alias Budi Wijaya as the insured where he uses a fake ID to register as an insurance customer, is against the law. It was proven after checking, based on a letter from the Head of the Tangerang Regency Population and Civil Registration Service Number: 470 / G-DKPS on May 9, 2016, it turned out that the data was not found and was not in the population database at the Tangerang Regency's Population and Civil Registry Office. Based on a photocopy of the Identity Card (KTP) attached to the verification results is that the Identity Card (KTP) has never been issued, so it can be concluded that the Identity Card (KTP) is invalid. The insured uses a fake ID card to close the insurance agreement, then submits an improper health insurance claim and is made several times in the near term. On the basis of the use of fake ID cards to cover coverage, PT. Asuransi Allianz Life Indonesia as the guarantor feels aggrieved because their party must pay the sum insured, which if they knows that the insured uses fake ID cards since the beginning of the coverage agreement should not be approved by the guarantor.

Filing a claim in health insurance that tends to be easy to be a factor in the emergence of opportunities for fraud. Furthermore, referring to the results of the author's interview with Mr. Asep Sopyan as an agent of the Insurance Company Allianz Life Indonesia, that the insured can submit insurance claims, in two ways, namely cashless and reimbursement. Cashless or non-cash methods, using the card, the insured only needs to show the insurance participant card to the administration of the partner hospital. In the reimbursement method, the insured will first pay the hospital bill, then submit the claim by filling out the claim form and completing the required documents, then sending it to the insurance office. In this case, the insured uses the reimbursement method, where the insured fills out the claim form and fulfills the claim requirements document such as proof of hospital payment.

The Criminal Code provides protection against any improper use of identity. In Article 378 of the Criminal Code, basically it stipulates that anyone with the intention to benefit oneself or another person unlawfully, using a false name or dignity, with deception, or a series of lies, causes others to surrender something to him, threatened with fraud with a maximum imprisonment of four years. However, in this case the prosecutor prosecuted Article 236 of the Criminal Code, bearing in mind the heavier maximum sentence of six years in prison. The case of falsification in the insurance constitutes a falsification of the letter as regulated in Article 263 of the Criminal Code, which basically explains that, anyone who makes a fake letter or falsifies a letter, which can issue something rights, obligations or something debt relief, or used as information for an act, with the intention to use or order someone else to use the documents as if they were authentic and not falsified, then using them could result in a loss due to falsification of the letter, with a prison term of up to six years. Threatened with the same criminal who intentionally

uses fake or forged documents as if it were true, if the use of the letter can cause harm. " [6]

In the decision of the District Court, the judge decided that Budi Arman had been proven legally and convincingly according to law guilty of committing a criminal act by intentionally using fake letters resulting in losses as regulated and threatened with crime in Article 263 paragraph (2) jo. Article 55 paragraph (1) jo. Article 64 paragraph (1) of the Criminal Code, and states that Budi Arman has been proven legally and convincingly according to law guilty of committing a crime of accepting or controlling placement, transfer, payment, grants, donations, safekeeping, exchanging, or using assets he knows or deserves to be assumed constitutes the result of a criminal offense, as regulated and threatened with crime in Article 5 paragraph (1) of the Republic of Indonesia Law Number. 8 of 2010 concerning the Prevention and Eradication of Money Laundering Criminal Acts, and impose criminal charges on Budi Arman, therefore, with imprisonment for 2 (two) years and 6 (six) months and a fine of Rp 500,000,000. (Five hundred million rupiahs) with the provision that if the fine is not paid, then it will be replaced with imprisonment for 2 (two) months.

However, in this study, the author wants to discuss this case in the civil aspect, that no good faith was implemented, contrary to Article 1338 paragraph (3) of the Indonesian Civil Code which explains that an agreement must be implemented in good faith. Then, regarding the position of the policy, as stipulated in Article 251 of the Indonesian Commercial Code, giving false or incorrect information results in the cancellation of the liability. Furthermore, in Article 276 of the Indonesian Commercial Code which states that the guarantor is entitled to have a premium or demand it if he has assumed a danger, it is known in the future that the loss caused by the hazard is caused by the insured's own mistakes. This provision explains that the guarantor has no obligation to provide compensation caused by his actions intentionally.

Furthermore, in Article 1320 paragraph (4) of the Civil Code that an agreement that is not based on a right matter is an objective requirement and if it is not fulfilled then the agreement becomes null and void or is never considered to exist. Thus, the cancellation of an insurance agreement that does not fulfill the principle of good faith is null or void by itself, in which the consequences of the premium paid have been explained in the provisions of the Policy. In the Allianz Policy in Article 24, it is explained that any cancellation of the policy can be done without first having to obtain a court decision and in connection with this matter override article Article 1266 of the Civil Code. Furthermore, in Article 26 letter d, that the guarantor is obliged to reject and / or cancel and / or end the application for insurance coverage and / or the policy, if the insured is known and / or reasonably suspected of using fake documents. Any cancellation of the policy can be done without first having to obtain a court decision and in connection with this the parties waive Article 1266 of the Indonesian Civil Code and any amendments (if any).

Based on the descriptions above, according to the author, a life and health insurance agreement between Budi Arman

alias Budi Wijaya as the insured with PT. Asuransi Allianz Life Indonesia as the guarantor does not fulfill the legal requirements of the agreement, and the actions of the insured who uses fake ID cards intentionally prove that the insured did not apply good faith when carrying out insurance closure.

According to the author, although the payment of claims is the right of the insured who has paid the premium, but in this case the insured pays a premium of Rp. 800,000.00. (eight hundred thousand rupiahs) per month, starting from September 2015 and making claims on November 24, 2015 on the basis of a receipt from the Satyanegara Hospital in Sunter of Rp. 9,000,000 (nine million rupiah) and approved by Allianz. Furthermore, on January 19, 2016 Budi Wijaya again filed a claim with a receipt from the Husada Hospital in Mangga Besar, which triggered the suspicion of the guarantor to the insured. In the decision, there is evidence of the insured in the form of several insurance policies from other insurance companies. So, with only 1 proof of hospital payment is possible if the insured submits several claims to other insurance companies that aim to make the insured get a profit. This if related to the principle of insurance, can also conflict with the principle of indemnity and subrogation in insurance. In essence it explains that insurance is not for profit, but to avoid losses arising from certain risks and return the insured to its original position as it was before the loss happened. That, Budi Arman alias Budi Wijaya in this case has misused the coverage with the intention to take advantage, and it is clear that he did not have good intentions from the start. Furthermore, the authors argue that the decision of the District Court Judges is the right thing. This dispute is resolved through a court of law, where the judge's decision is absolute. So according to the author, the judge's decision in the District Court Decision Number 914 / Pid.B / PN.Jkt.Sel is appropriate in the application of the law, but does not regulate the position of the policy because it is a civil aspect. Regarding the legal consequences of the actions of Budi Arman alias Budi Wijaya who have used fake ID cards in the insurance agreement, have been regulated in the general provisions of the Allianz Policy. This is in accordance with Article 1338 paragraph (1) of the Indonesian Criminal Code, which states that all agreements made legally apply as a law for those who make them. In the general provisions of the Allianz Policy article 3 letter c, it has been explained that the Allianz insurance party has the right to cancel the Policy and not pay any benefits in the event of an element of corruption, money laundering, crime, fraud, error and / or failure to disclose the truth of the documents that are the basis coverage both in the contestable period or afterwards. Then, in the next letter in the same article explained that if the guarantor has paid insurance benefits in the contestable period, then the guarantor has the right to review the truth of the payment of benefits. If the facts are found that there is an element of fraud and / or discrepancy between the information and / or statement of the insured on SPAJ and / or other forms, if any, with the actual condition of the insured, the guarantor has the right to take the necessary actions in following up on the facts including but not limited to withdrawing return the insurance benefits paid. In this

case, the guarantor reports the insured to the police which is then followed up in the criminal trial process. This is an implementation of Article 251 of the Indonesian Commercial Code which states that all information that is false or incorrect, or conceals circumstances that are known to the insured, even if done in good faith, which if found to cause the agreement will not be held, or held, but with different conditions, result to coverage canceled. Thus, the legal settlement of not implementing good faith can be done through the court or outside the court, can be seen from disputes or problems that arise. In this case, the problem is resolved through the court in the criminal aspect, because the actions of the insured are a criminal offense. That is the importance of the principle of good faith to be applied in insurance agreements, where the enforcement of the implementation of the good faith principle is not limited to the dimension of civil law, but can have implications for criminal sanctions.

### 3. CONCLUSION

Based on the overall analysis of the subject matter described above, the conclusions can be drawn that:

1. In an insurance agreement, good faith is a very important principle in the occurrence of the agreement because it involves the rights and obligations of the parties. In general, the principle of good faith means that the parties in the agreement to be agreed upon by law have an obligation to provide full information whether the information requested or not, which can affect the approval of other parties to agree or disagree in the agreement. This good faith must be implemented by both parties between PT. Asuransi Allianz Life Indonesia with Budi Arman alias Budi Wijaya. In disputes between the two parties, Budi Arman as the insured does not apply the principle of good faith, in accordance with what is generally regulated in Article 1338 paragraph (3) of the Indonesian Civil Code, for using fake KTPs in closing insurance. And the insurance agreement is null and void because it does not fulfill a legal reason according to Article 1320 paragraph (4) of the Indonesian Civil Code, and is affirmed in Article 251 of the Indonesian Commercial Code.
2. the legal settlement of not implementing good faith can be resolved through the court or outside the court, can be seen from the problems that arise. In this case, the problem is resolved through the court in the criminal aspect, because the actions of the insured are a criminal offense. Regarding the legal consequences of the actions of Budi Arman alias Budi Wijaya who have used fake ID cards in the insurance agreement, it has been regulated in the general provisions of the Allianz Policy article 3 letter c, it has been explained that the Allianz insurance party has the

right to cancel the Policy and not pay any benefits in the event of an element of corruption, money laundering, crime, fraud, error and / or failure to disclose the truth of the documents that are the basis of the coverage. The Insurer has the right to review the correctness of the payment of benefits. If it is found that there is an element of fraud and / or discrepancy between the information and / or statement of the insured on SPAJ and / or other forms, with the actual condition of the insured, the guarantor has the right to take the necessary actions in following up on the facts including but not limited to withdrawing insurance benefits already paid. In this case, the guarantor reports the insured to the police which is then followed up in the criminal trial process.

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