

Application of the Proximacause Principle in Loss Insurance According to the Book of Trade Law and Regulation Number 40 of 2014

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Keywords: Insurance, Policy, Proxima cause, Evenement, Compensation.

Abstract: Companies that accept risk transfer from the insured are insurance companies. Losses suffered by the insured due to an event must be stated in the policy. Policies that are approved by the insured and insurance companies must explain the principles of insurance law, one of the important principles in insurance law is Proximacause. Proximacause is used to measure or assess the liability of an insurance company to provide compensation to the insured, caused by events experienced by the insured. If the cause or event that causes the loss is not guaranteed in the policy, compensation costs cannot be paid by the insurer to the insured. Payment of compensation made by the guarantor is limited only to events that are guaranteed in the policy, if excluded in the policy, policy, compensation cannot be paid by the guarantor. This paper aims to find out what are the regulations governing Proximacause and how to apply the Proximacause principle for loss insurance in accordance with Trade Law and regulation No. 40 of 2014. This paper is based on empirical juridical methods. analyze regulations and observations in the field.

1 INTRODUCTION

Risk is a danger that threatens humans that can cause harm (Purba, 1992; Saleh, 1992). Risks can occur due to human activity factors themselves, can also occur due to natural disasters, such as floods due to earthquakes. According to Prof. Subekti, risk is the obligation to bear losses (Simanjuntak, 1999; Pagliari, 2012).

There are several ways that humans can do to overcome risk, namely avoiding risk, preventing risk, transferring risk to insurance companies. Transferring risk to insurance companies is the best way to manage risk. The insurance company is the first party to guarantee the risk of the insured. The insured has hope for economic certainty and stability if at any time something unexpected happens (Suparman, 2003; Liakopoulos, 2019).

The second party called the insured, is an individual, group, institution, legal entity, company or someone who follows insurance. The transfer of risk from the insured to the guarantor can only occur because of an insurance agreement. The insurance agreement is stated in a written deed called a policy. The policy is called an insurance contract between the guarantor and the insured.

The loss earned by the insured is caused by the

event or event stated in the policy, if the event or event is not stated in the policy, then the loss cannot be paid to the insured according to the principle of insurance law, namely proximacause or the main cause of risk.

The Proximacause principle that is applied to insurance can be seen when the insured submits an insurance claim (Arquilla, 1993). The insured can claim the loss suffered by the guarantor by first determining the cause of the loss. This means that the Insured can only claim if the loss suffered is caused by a risk guaranteed by the policy. Guaranteed causes must be "direct causes".

2 DISCUSSION

2.1 Regulations Governing the Proximacause of Loss Insurance

According to the provisions, insurance law regulations are regulated in accordance with Commercial Law and Number regulation. 40 of 2014. An insurance agreement was made between the Insurer and the insured. In the Commercial Law Act, the type of insurance regulated is the object loss insurance objects such as fire insurance, motor vehicle insurance, while

in Law No. 40 of 2014¹ the type of regulated insurance is insurance for a number of human life object money.

In addition to regulating the type of insurance, the Commercial Law Act also regulates insurance principles, including the Insurable Interest Principle, the Principle of Compensation, the Most Good Good Principle, Contributing Principle, Subrogation Principle, Proximacause Principle. The main direct cause is the active main cause. (stand-alone).

The direct cause is not the first or last cause, but the dominant cause or efficient cause, if there is a direct relationship between cause and effect. The rules governing proximacause are Article 246 of the commercial law code

2.2 Application of the Proximacause Principle to Loss Insurance

The principle of proximal cause in insurance is called the proximate cause. the application of the principle of proximate causes Often causes disputes due to errors in the interpretation of the cause of the loss. In insurance policies always listed what causes are guaranteed. This statement implies that the company will pay compensation for the loss of the insured object if the loss arises due to one of the guaranteed reasons.

Before the insured can claim the loss suffered from the insurer must first be determined what the cause of the loss. This means that the Insured can claim only if the losses suffered are caused by a risk guaranteed by the policy. The guaranteed cause must be a "proximate cause". Causation that brings an effect without intervention is something else that works actively and that comes from a new and independent source.

In the practice of insurance, it is sometimes very difficult to establish an event that is considered as the most dominant or most efficient cause of loss, because frequent events are not single events, but are a series of events that are interrelated so that there is often controversy and debate in determining the main events that cause losses.

For example, the occurrence of hurricanes with fires, which are not related, but there are two types of losses, due to fires and due to hurricanes. For example, other events or event fires that occur when there are riots, each of which is not related as a solution:

1. If two losses cannot be separated, and both are not excluded in the policy, guaranteed.

¹The Commercial Law Act Law No 40 of 2014 concerning Business Asuransian

2. If one is excluded and the loss cannot be separated, it is not guaranteed. If it can be separated, only those who are not excluded are guaranteed insurance.

2.3 Principle of Principles in Insurance Law

2.3.1 Principles of Proximacause

Events that cause guaranteed losses in the policy cannot be disturbed. the guaranteed loss is only the loss suffered until the cause has just begun to work. Losses suffered after unsafe risks cannot be claimed.

Solving problems in applying the principle of direct causes in special circumstances, often requires the help of determination by experts or related professionals, such as professional surveyors and other insurance law experts.

Insurance provides guarantees for losses caused by certain risks insured or in other words the existence of an insurance agreement raises the obligation for insurance companies to provide compensation if the insured suffers losses. However, in reality we often have difficulty in determining the cause that causes this loss, because we often encounter causes for more than one loss, which may be a series of events that occur together.

This principle is related to a causal relationship, to determine what causes this loss and what causes it to be guaranteed by an insurance policy. The purpose of the Proximacause principle is that the insurance company will be responsible for the loss suffered by the insured if the loss is indeed the responsibility of the insurance company. If not, then the insurance company can be exempt from the obligation to pay compensation. Accordingly, based on this reason, the loss borne by the guarantor arises, but not all causes are borne by the guarantor. Although the policy with the All Risk clause, that is, the policy, bears all risks, it does not mean that all risks are guaranteed because there are always exceptions.

2.3.2 Insurable Interest

Insured interests give a person the right to insure because of the financial relationship recognized by law between that person and the insured object. Insurable Interest Definition: "Legal rights for insurance of financial relationships recognized by law, between the insured and the subject of insurance" means that a person's right to insure arises from a financial relationship that is recognized by law between that person and the object of insurance.

Furthermore, in the Criminal Procedure Code there are provisions governing insured interests "If a person is responsible for himself, or someone insured by a third party, at the time the insured does not have an interest in the insured object, the guarantor is not required to pay compensation. With so, the insured must be able to prove that he has an insurable interest because if he does not have an interest in the insured object, there will be no compensation.

2.3.3 Principle of Utmost Good Faith

The principle of honesty is to provide information by the insured to the insurance company regarding all information when negotiating the making of an insurance agreement. Liability of the insured must be done from the beginning of the application or during the insurance period. If the insured party intentionally or unintentionally hides information that is relevant to the object insured, then the insurance company can cancel the insurance agreement.

The best and honest intention must also be with the guarantor, that is, when the insurance is done, the insurance company must inform and explain the extent of the guarantee and the rights of the insured because the insured is the guarantor. The definition of utmost good faith in Article 251 (Santri, 2019) of the Indonesian Criminal Code is as follows: Any information that is false or incorrect, or everything that does not tell the things that are known by the guarantor, no matter what his intentions are, that way, so that if the insurer already knows the actual situation, the agreement will not be closed with the same conditions, resulting in the cancellation of the agreement.

2.3.4 Principles of Indemnity

The function of insurance is to divert or share the risks that are likely to be suffered or faced by the insured because there is an uncertain event. Therefore, the amount of compensation received by the insured must be balanced with the loss he suffered, this is the essence of the principle of indemnity. From the definition of Article 246 KUHD, the insurance agreement (loss) is a compensation agreement or indemnity agreement. Insurance in this case is a loss insurance that only replaces the losses actually suffered by the insured, the principle of compensation (indemnity) is a mechanism for paying compensation with money, which in a sense includes several things:

1. Financial changes
2. Place the insured's financial position the same as its financial position just before the loss occurs (Riau,).

2.3.5 Subrogation Principle

Article 1365² of the Civil Code states as follows: "Every act violates the law, which requires the person who caused the wrong to issue the loss, compensates for the loss". In the implementation of insurance agreements, the possibility of a loss occurring can be caused by a third party. Literally based on Article 1365 of the Civil Code above, then if the insured has received compensation from the insurer, it is also permissible to claim compensation to the party causing the loss, meaning the insured can receive compensation that exceeds the loss suffered. But the problem is different in the insurance agreement because it must be remembered that the insurance agreement is not like a normal or general agreement, and to avoid this in the insurance agreement the subrogation principle applies where this principle is an integral part of the principle of indemnity which is essentially that the insured cannot obtain compensation in excess of the losses suffered.

2.3.6 Principle of Contribution

This principle actually supports the principle of subrogation, the principle of this contribution arises when over an object is insured more than from an insurance company, then if a guaranteed loss occurs and one insurance company has paid the full loss then the right to claim compensation to another company is transferred to the company insurance that has paid the full compensation. The principle of this contribution is also only valid in the insurance of losses (scadeverzekering) and does not apply to insurance amounts (sommenverzekering) The principle of this contribution applies or arises when fulfilled the following conditions:

1. There are 2 (two) or more indemnity policies
2. The policies guarantee the same subject matter
3. The policies guarantee the same subject matter
4. The policies cover the same interest
5. The policies cover the same object
6. The policies are valid at the same time, that is, when the loss occurs

3 CONCLUSIONS

Regulations governing the loss insurance proximate-cause contained in Law No. 40 of 2014 concern-

²The Commercial Law Act Law No 40 of 2014 concerning Business Asuransian

ing Insurance and Commercial Law Law Article 246 which states that the guarantor will only pay compensation to the insured if the loss and damage caused by an event or event is contained in an insurance policy. The rules governing Proximatecause in the regulations have not been explicitly regulated regarding the obligations of the parties. Because it is needed, new regulations specifically regulate Proximatecause. The application of the Proximatecause principle to loss insurance starts with an agreement between the insured and the insurance company and is written in an agreement called a policy. Which guarantees losses in accordance with the agreed events. The application of the Proximatecause principle in insurance experiences constraints, sometimes it is very difficult to establish an event that is considered to be a proximatecause which is the most dominant or most efficient cause of loss, because events often occur that are not a single event, but a series of interrelated events so that there is often controversy and debate in determining the main events that cause harm. So expertise in survey theory is needed to determine the main causes of events that cause harm. If the event that caused the loss is not listed in the policy, the claim is not paid by the guarantor.

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