

RINGKASAN

PRINSIP KEBEBASAN BERKONTRAK DALAM PERJANJIAN ASURANSI JIWA DI INDONESIA

BAYU WIDIYANTO

Pada perusahaan asuransi, kecenderungan untuk menggunakan rancangan ataupun model polis asuransi yang telah tercetak sebagai bentuk dokumen perjanjian asuransi yang ditandatangani oleh penanggung dan tertanggung, dipahami sebagai suatu bentuk pelayanan yang tidak dapat dihindari, mengingat begitu banyaknya jumlah tertanggung yang harus dilayani sebagai alasan efisiensi. Tetapi bagi penanggung hal tersebut dijadikan upaya untuk melepaskan kewajiban terhadap suatu peristiwa yang mungkin akan merugikan penanggung. Cara yang dilakukan dengan pencantuman klausula baku yang dimaksudkan untuk membebaskan atau membatasi penanggung dari kewajibannya terhadap tertanggung.

Dari latar belakang di atas, permasalahan yang dikaji dalam penelitian ini adalah : apakah dalam perjanjian asuransi berdasarkan pada asas kebebasan berkontrak ?, dan bagaimana perlindungan hukum bagi tertanggung dalam perjanjian asuransi jiwa.

Penelitian ini merupakan penelitian hukum normatif. Pendekatan masalah yang digunakan dalam memberi jawaban terhadap permasalahan yang dibahas adalah dengan pendekatan perundang-undangan dan pendekatan konseptual. Analisis dilakukan dengan cara deskripsi yang bersifat kritis.

Sebagai hasil dari penelitian tersebut pada intinya menyimpulkan bahwa perjanjian dalam praktek ditinjau dari asas kebebasan berkontrak, perjanjian asuransi tersebut tidak sepenuhnya berdasarkan pada asas kebebasan berkontrak. Dalam hal ini pihak penanggung menempatkan posisi lebih tinggi daripada tertanggung, sedangkan perlindungan hukum bagi tertanggung mutlak diperlukan dalam perjanjian asuransi sebagai upaya pencegahan terhadap tindakan sewenang-wenang yang dilakukan pihak penanggung terhadap tertanggung. Serta pencantuman aturan baku yang bertentangan dengan Undang-Undang, tertanggung berhak menuntut ganti rugi lewat pengadilan atau lembaga penyelesaian sengketa konsumen. Sebagai saran perlu adanya pembaharuan terhadap berbagai peraturan perundangan asuransi yang mampu memberikan perlindungan hukum yang seimbang bagi penanggung dan tertanggung. Selain itu perlu peran serta pemerintah dalam memberikan pengawasan yang lebih ketat terhadap kegiatan perusahaan asuransi di Indonesia, perlu dibentuk lembaga khusus yang berfungsi sebagai pengontrol kegiatan perasuransian dan pemberian ijin pendirian perusahaan asuransi di Indonesia.

SUMMARY

THE FREEDOM OF CONTRACT PRINCIPLE ON LIFE INSURANCE AGREEMENT IN INDONESIA

BAYU WIDIYANTO

In the insurance company, using contract draft model (polis insurance) as pattern of insurance contract document will be signed by insurer and insured is a common practice. Mean as service and efficiency reasoning cannot avoid, remained many sum of insured that must be services. But for the insurance become effort to release obligation over the incident that may be loose the insurer. The way to be used with prepare a model draft of contract to be signed by his contract partner intentionally or unintentionally has neglected or at least limited the freedom of contract of the partner to balance and negotiation points of contract which can be accepted.

Based the background above, the problem maintained on this research is : what is insurance agreement based on freedom of contract principle?, how to protect the insured in life insurance agreement?.

This study, constitute normative law, problem approach while used is statute approach with accompanying compare of consumer law, this analyze has been done with description where critically.

This study, the core to explaining that insurance agreement in practice not fulfill the freedom of contract principle. Because the insurer have the highest position above insured. The protection for the insured absolutely need in insurance agreement as an effort to prevent unfair act did by insurer to insured, and include the standard contract which opposite with regulation and law. The insured can claimed compensation to the court or BPSK.

Cause of that, as suggest need a renewed for regulation and constitution of insurance can be protection an equality between insurer and insured. Beside that need a participation of the government to give strictly control to insurance activity, especially in giving permission to build insurance company in Indonesia.

ABSTRACT

THE FREEDOM OF CONTRACT PRINCIPLE ON LIFE INSURANCE AGREEMENT IN INDONESIA

BAYU WIDIYANTO

This study has purpose to examine the freedom of contract principle in life insurance agreement in Indonesia.

This study is constitute of normative law. Problem approach while used is statute approach with accompanying compare of consumer law. This analyst has been done with description where critically.

This study, the core to explaining that insurance agreements in practice not fulfill the freedom of contract principle. Because the insurer have the highest position above insured. The protection over policy holders (insured) is still too weak, if we examine the insurance cases. The insured will always the loser, most often the weakening of insured caused by misunderstanding of the content of contract between insured and insurer. There is still a room for lawyers discussing the validity or invalidity of an agreement caused by standardization of contract to binding or to have in to effect upon the signed parties.

It is a responsive from law community to find a just on the insured company which is disposed to place in the weakening position over the insurer which is positioning as the winner. Lawyers argue that the inclination of business actor to prepare a modeled draft of contract to be signed by his contract partner, intentionally or unintentionally has neglected or at least limited the freedom of contract of the partner to balance and negotiation points of contract which can be accepted.

Keywords: Freedom of contract principle, the protection, and standard contract.