

Reconstruction of Life Insurance Agent Work Contract Regulations Based on Justice Value

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Abstract

The purpose of this research is to analyze the weaknesses of Life Insurance Agent Work Contract Regulation and how to reconstruct the regulation of the Life Insurance Agent work contract regulation based on the value of justice, namely as in the Insurance Law No. 40 of 2014, Article 1320 of the Civil Code, Article 1338 of the Civil Code and 1313 of the Civil Code using a constructivism paradigm, through direct interviews with informants empirically supported with studies literature through theoretical steps. The results of this study show that the Weaknesses that arise in the life insurance agent work contract regulation with the study of Islamic law, namely in carrying out the contract is not transparent so that the agent and the insurance company when facing problems, are only decided unilaterally and not based on the contract. Therefore, the Reconstruction of the regulation on a life insurance agent work contract regulation based on the value of justice, namely that in entering into an agreement with a life insurance company with a work contract, it is not in accordance with Article 1313 of the Civil Code and Article 1338 paragraph (1) of the Civil Code because in practice the life insurance company provides a letter notification of the update without the knowledge of the agent, which resulted in unilateral termination of employment. Dispute resolution in insurance agreements can be carried out through litigation and non-litigation channels. If the principle of good faith is not fulfilled, the insurance agreement can be canceled. Regulations for financing agent agreements in Indonesia use a system of deliberation and mutual cooperation, while in various countries they use an arbitration system in a court. Regulation of the Financial Services Authority Number 69 /Pojk.05/2016 Concerning the Conduct of Business of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies.

Keywords: Legal Reconstruction, Life Insurance, Work Contract, Justice Value.

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INTRODUCTION

The insurance agreement is an agreement formed through a bargaining process between the insurer and the insured or who represents it until an agreement arises between the parties to bind the mselves in an agreement. Every company needs employees who work in it to provide offers so that the company's rights and obligations are fulfilled, including insurance companies, insurance companies need employees or what are called agents. The Agency Agreement Letter and the attachments that have been made with the insurance agents of the Indonesian life insurance company is an agreement of the parties which constitutes law for the parties. The object of the matter in dispute is the Notice of Termination of the Agency Agreement submitted by the Indonesian life insurance company addressed to the

insurance agents of the Indonesian life insurance company.

Agency Agreement Letter Article 3 Legal Relations that the relationship between an insurance agent and an insurance company (Indonesian life insurance Company) is an ordinary contractual relationship as referred to in the Indonesian Civil Code (*Burgerlijk Wetboek*). This is interpreted by the existence of a legal relationship between the insurance agent and the insurance company (Indonesian life insurance Company) which has an equal and balanced legal standing. This contract is indicated by the existence of an agency agreement entered into by an insurance company (Indonesian life insurance Company) with an insurance agent.

The insurance agents of the Indonesian life insurance company refuse all content and material substance in the Notice of Termination of the Life Insurance Company Agency Agreement to be terminated unilaterally by the life insurance company without clear subjective reasons by forcing the will without basing it on the Agency Agreement Letter and its attachments which has been made based on the agreement of the parties which constitutes law for the parties. There were 18 agents who were terminated unilaterally by the life insurance company and were required to pay a clawback amount of money to the life insurance company, but they could not continue working at the new life insurance company's place on the grounds that they had not paid the clawback. (Khairani, 2022) According to the researchers, this is actually considered an excuse for not having good faith and a desire to default on not meeting the payments to agents that have been agreed upon with contracts for 5 (Five) years from the 2017-2022 period.

Implementation of the agency agreement with the insurance company carried out with the contents of the agreement that has been determined by the insurance company where the agent binds himself to sell products originating from the insurance company itself so that the agent performs his work on behalf of the principal or company.

In order to fulfill the provisions of this agreement and carry out the provisions that exist on the part of the insurance company including but not limited to marketing procedures, services that are currently in effect that will be used by the first party for the next time, namely those related to product sales, providing information that is in accordance with reality, clear, and honest with the prospective policyholder concerned with the provisions relating to the rights and obligations of the policyholder and not limited to the general and specific terms of the policy, hand over the life insurance policy along with related documents in the context of service to the policyholder for and on behalf of the insurance company, make daily reports in writing about its activities to the first party and submit a guarantee letter from the agreement according to the form determined by the first party. In carrying out the agency agreement at the insurance company Bumiputera Kab. Brebes (CNBCIndonesia, 2023) often has irregularities committed by the agent, because that is the reason for the emergence of the non-implementation of the agency agreement properly (Wahyu, 2019). Related to examples of cases where agency agreements are not implemented properly, such as the unilateral termination of an insurance agent agreement with an insurance company which results in the insurance agent having to pay clawback to the life insurance company.

Based On This Problem, The Author Then Formulate Several Problem Discussed in This Article, Namely:

1. What are the weaknesses of Life Insurance Agent Work Contract Regulation in Indonesia currently?
2. How Is the Legal Reconstruction of Life Insurance Agent Work Contract Regulation Based on The Value of Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of Life Insurance Agent Work Contract Regulation in Indonesia

The principle of risk management for Insurance, which in this case, sharia life insurance, for example, is risk sharing, that is, the risk is shared among insurance participants. This can be interpreted from the DSN MUI

fatwa that Sharia life insurance is an activity of protecting and helping a number of people/parties, which means that the risks that occur will also be shared among all participants in Sharia life insurance. Meanwhile, the principle of conventional insurance risk management is risk transfer, namely the principle of risk by transferring or transferring the risk of insurance participants to insurance companies. Conventional insurance is basically a risk management concept by transferring risks that may arise from certain unexpected events to other people who are able to compensate for losses suffered in return for a premium. The difference between the concept of sharia life insurance and conventional insurance is also formulated as follows (Garcia, 2022):

- a. The National Sharia Council of the Indonesian Ulema Council (DSN MUI) issued a fatwa on general guidelines for sharia life insurance, providing a definition of sharia life insurance. Sharia life insurance (*ta'min, takaful, tadhmun*) is an effort to protect and help each other among a number of people or parties through investments in the form of *tabarru'* assets that provide returns to face certain risks through contracts or agreements that are in accordance with sharia.
- b. The definition of conventional insurance is as previously described. Etymologically it is called the name of the insured, in Dutch it is known as *verzekerling*, which gave birth to the terms *assurantie, assuradeur* for the insurer and *ge assureder* for the insured.
- c. Sharia life insurance has a contract in which it is known as *tabarru'* which aims to be kind to help fellow human beings, not solely for commercial and *tijarah* contracts. *Tijarah* contracts are contracts or transactions with commercial purposes, for example *mudharabah, wadhi'ah, wakalah* and so on. In the form of a *tabarru'* contract, *mutabarri* embodies an effort to help someone and this is recommended by Islamic law, donors who are sincere will receive a large reward as in QS. Al Baqarah verse 261. Whereas conventional insurance agreements are regulated in Article 1774 of the Civil Code which includes insurance or coverage as a chance agreement which is equated with gambling. The concept of a conventional insurance agreement as stipulated in Article 1313 of the Civil Code. The two parties, namely the insurer and the insured, enter into an agreement which creates a legal relationship which consequently creates reciprocal rights and obligations. This conventional insurance raises criticism which contains *gharar, maisir*, and usury which are very contrary to the principles of Islamic or sharia law. Because of that, the alternative in the midst of the weaknesses of financing life insurance agents is the practice of sharia life insurance. At first, this sharia life insurance was

only regulated by a Decree of the National Sharia Council. However, it has only been regulated since the issuance of Law Number 40 of 2014 concerning Insurance.

- d. The sources of sharia life insurance law are of course guided by sources of Islamic law such as the *Koran, sunnah, ijma', fatwas, qiyas*, and DSN-MUI fatwas. Meanwhile, conventional insurance has a source of law that comes from the human mind, philosophy, and culture.

The main difference between sharia and conventional life insurance lies in the objectives and operational basis. In terms of objectives, sharia life insurance aims to help each other (*ta'awuni*) while conventional insurance aims to replace (*tabaduli*). From the aspect of operational basis, conventional insurance is based on statutory regulations, while sharia life insurance is based on sharia laws and regulations. From these two differences, other differences emerge, regarding the relationship between the company and customers, benefits, paying attention to sharia prohibitions, and supervision. In relation to the customer-company relationship, this is related to the issue of contracts (contracts), where in Sharia life insurance the company is the trustee (representative), while in conventional insurance the company is the owner of the insurance funds. Therefore, the profits of sharia life insurance are partly owned by the customer, while the profits of conventional insurance are entirely owned by the company.

So far, the role of sharia life insurance in the country has not been large. This is also experienced by Islamic banking, which has only contributed 3 percent of the national banking market share even though it has been running earlier than Islamic life insurance. Seeing this, it is clear that sharia life insurance has great potential in the future, at least being able to control a market share of up to 97% by means of sharia elements that are not yet sharia.

The majority of the population in Indonesia is Muslim. This is a potential market for the development of sharia life insurance in Indonesia. The emergence of sharia life insurance provides a new alternative for Muslims in Indonesia. *Gharar, maisir*, and usury factors that doubt Muslims will be eliminated by the sharia system. With the growing development of the sharia insurance business in Indonesia, it will naturally have an impact on economic development in Indonesia.

By looking at the fact that there are more than 180 (one hundred and eighty) million Muslims in Indonesia and their awareness of Islam continues to increase, there is a wide market opportunity (Sari, 2022). Demand for the presence of Islamic financial institutions in various places continues to increase. The recent economic crisis has shown that Indonesia needs another concept in managing its economy. Islamic economic

institutions are the most appropriate choice. Therefore, to meet market needs, as well as educate the public, more Islamic banks are needed, and now Islamic life insurance has begun to emerge as its counterpart. The presence of new Islamic financial institutions will spur healthy competition for quality development which will ultimately benefit the nation and state (Wahyu, 2018).

2. Legal Reconstruction of Life Insurance Agent Work Contract Regulation Based on the Value of Justice

The fact that legal justice has not materialized for the rights of insurance company partners such as their agents or financing agents for life insurance is not yet in accordance with Article 28D paragraph (2) of the 1945 Constitution of the Republic of Indonesia as explained by researchers in Chapter III seems will continue even though in fact has been practiced and is increasingly becoming a necessity, especially for legal certainty and sustaining family life insurance agent financing (Toebagus, 2022). Because there is no justification for human exploitation of humans, exploitation between financing agents for life insurance companies, especially in Brebes, protection against suppression of agent financing, and protection against dismissal on the pretext of the object having issues and then being able to arbitrarily fire the financing agent who has worked with good and wasting all his energy and energy to make life financing a life insurance agent yet to get comfort in his working life.

Then regarding the output that researchers want in reconstructing the regulation on financing life insurance agents because life insurance rules are not yet strong, starting with the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) No. 21/DSNMUI/X/2001 concerning General Guidelines for Sharia Insurance. This fatwa can be used as a guideline but has no legal force in national law. In order for the provisions of Sharia Insurance to have legal force, it is necessary to establish regulations that include existing laws and regulations in Indonesia, although it is felt that they do not yet provide stronger legal certainty, the regulation is a Decree of the Minister of Finance of the Republic of Indonesia No. 426/ KMK.06/2003, Decree of the Minister of Finance of the Republic of Indonesia No. 424/KMK.06/2003, Decree of the Minister of Finance of the Republic of Indonesia No. 422/KMK.06/2003 and Decree of the Directorate General of Financial Institutions No. 4499/LK/2000, Government Regulation No. 39 of 2008, Decree of the Minister of Finance no. 11/PMK.010/2011. In this case, the researcher wants insurance regulations, especially financing life insurance agents, to be formed by special rules such as Ministerial Regulations or Legislation (UU) with Government Regulations (PP). As Article 6 of Law Number 12 of 2011, the material content of the legislation must contain protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality in law and government, order and legal

certainty, and/or balance, harmony, and alignment. This is the arrangement for financing a life insurance agent if a separate special regulation is formed in the form of legislation that is suitable because it already fulfills the category of family content material, especially Book 1 of the Civil Code concerning the rights and obligations of people and families, it is regulated there, such as inheritance marriages and so on, especially contracts between individuals, namely financing life insurance agent with his life insurance company.

If statutory regulations have been formed, of course, the PP must also be formed because it is a regulation that can implement laws. PP content material, namely further regulation of the provisions in the law which expressly refer to it and further regulation of the provisions in the governing law, although it is not expressly referred to as Article 12 of Law Number 12 of 2011.

In its application to the problem of reconstructing the regulation of agreements on financing life insurance agents, it is necessary to have a clear structure so that the law is systematic. In the application of life insurance agent financing, it turns out that they are treated differently between one financing agent and another, even though the performance between financing life insurance agents who succeed in selling life insurance premiums to customers is not much different, for example, one team financing life insurance agents has been successful for 4 (four) years in a row then failed in the last 1 (one) year and the other life insurance agent financing team failed in the first year then the last year in the last 5 (five) years it was successful, why not get fired like those who failed in the last year. Therefore, it is necessary to reconstruct the life insurance agent financing agreement so that the life insurance company does not arbitrarily impose financing on its life insurance agent because we are both human beings and as human beings, we must have a conscience (Aprilia, 2022).

Thus, the output that researchers want in reconstructing life insurance agent financing regulations because life insurance rules are not yet strong starts with the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) No. 21/DSNMUI/X/2001 concerning General Guidelines for Sharia Insurance. This fatwa can be used as a guideline but has no legal force in national law. In order for the provisions of Sharia Insurance to have legal force, it is necessary to establish regulations that include existing laws and regulations in Indonesia, although it is felt that they do not yet provide stronger legal certainty, the regulation is a Decree of the Minister of Finance of the Republic of Indonesia No. 426/ KMK.06/2003, Decree of the Minister of Finance of the Republic of Indonesia No. 424/KMK.06/2003, Decree of the Minister of Finance of the Republic of Indonesia No. 422/KMK.06/2003 and Decree of the Directorate General of Financial Institutions No. 4499/LK/2000,

Government Regulation No. 39 of 2008, Decree of the Minister of Finance no. 11/PMK.010/2011. In this case, the researcher wants insurance regulations, especially financing life insurance agents, to be formed by special rules such as Ministerial Regulations or Legislation (UU) with Government Regulations (PP). As Article 6 of Law Number 12 of 2011, the material content of the legislation must contain protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality in law and government, order and legal certainty, and/or balance, harmony, and alignment. This is the arrangement for financing a life insurance agent if a separate special regulation is formed in the form of legislation that is suitable because it already fulfills the category of family content material, especially Book 1 of the Civil Code concerning the rights and obligations of people and families, it is regulated there, such as inheritance marriages and so on, especially contracts between individuals, namely financing life insurance agent with his life insurance company.

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A legal system in actual operation is a complex organism in which structure, substance, and culture interact. To explain the background and effects of each part, the role of many elements of the system is required. The first thing depends on the applicable legal provisions. In order to overcome the problem of weak regulation of the life insurance agent financing agreement, in fact, it is needed to re-trace the values and norms of all Indonesian people so that the law is in accordance with the *volkgeist* (the soul of the nation) and does not just adopt insurance law that has a liberal culture and common law only because the system Indonesian law is prismatic which mixes continental European legal systems, civil law and common law, then is filtered with Pancasila ideology.

As Lawrence M. Friedman, in Halim (2023) views, structure and substance are solid characteristics that are formed slowly by social forces in the long run. All of these modify ongoing demands and are themselves long-term deposits of social demands. other. The legal culture of input from the public (in this case agents and financing agents for life insurance) can also affect the level of input and encouragement so that changes in regulation on financing life insurance agents become more equal and fair. The values and norms of the community (agents and life insurance financing agents) as a whole and in the long term also provide input regarding the regulation of financing the life insurance agent itself so that the future regulation reconstruction

can be Pancasila cultured and in accordance with *volkgeist*.

CONCLUSION

1. The concept of a conventional insurance agreement as stipulated in Article 1313 of the Civil Code where the two parties, namely the insurer and the insured, enter into an agreement that creates a legal relationship which consequently creates reciprocal rights and obligations. This conventional insurance raises criticism which contains *gharar*, *maysir*, and usury which are very contrary to the principles of Islamic or Sharia law. Because of that, the alternative in the midst of the weaknesses of financing life insurance agents is the practice of Sharia life insurance. At first, this Sharia life insurance was only regulated by a Decree of the National Sharia Council. However, it has only been regulated since the issuance of Law Number 40 of 2014 concerning Insurance. The sources of Sharia life insurance law are of course guided by sources of Islamic law such as the *Koran*, *sunnah*, *ijma'*, *fatwa*, *qiyas*, and DSN-MUI *fatwa*. Meanwhile, conventional insurance has a source of law that comes from the human mind, philosophy, and culture.
2. Insurance regulations, especially financing life insurance agents, require a reconstruction of its law in the form of special rules such as Ministerial Regulations or Legislation (UU) with Government Regulations (PP). As Article 6 of Law Number 12 of 2011, the material content of the legislation must contain protection, humanity, nationality, kinship, archipelago, unity in diversity, justice, equality in law and government, order and legal certainty, and/or balance, harmony, and alignment. This is the arrangement for financing a life insurance agent if a separate special regulation is formed in the form of legislation that is suitable because it already fulfills the category of family content material, especially Book 1 of the Civil Code concerning the rights and obligations of people and families, it is regulated there, such as inheritance marriages and so on, especially contracts between individuals, namely financing life insurance agent with his life insurance company. If statutory regulations have been formed, of course the PP must also be formed because it is a regulation that can implement laws. PP content material, namely further regulation of the provisions in the law which expressly refer to it and further regulation of the provisions in the governing law, although it is not expressly referred to as Article 12 of Law Number 12 of 2011.

REFERENCES

- Aprilia, R., Mahri, A. J. W., & Cakhyaneu, A. (2022). Efficiency of Sharia Life Insurance in Indonesia and Malaysia: The Effect of Profitability and Firm Size. *Indonesian Journal of Economics and Management*, 3(1), 1-16. Doi 10.35313/ijem.v3i1.4642.
- CNBC Indonesia. (2023). *Kronologi Kasus Bumiputera Hingga OJK Restui Penyelamatan*. taken from <https://www.cnbcindonesia.com/market/20230213015410-17-413126/kronologi-kasus-bumiputera-hingga-ojk-restui-penyelamatan>, on August 2023.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- García, F. T., Orozco, A. L. S., Pineda, M. P. G., & Villalba, L. J. G. (2023). Agency theory: Forecasting agent remuneration at insurance companies. *Expert Systems with Applications*, 215, 119340. Doi 10.1016/j.eswa.2022.119340.
- Halim, M. A. A., Amni, S. Z., & Maulana, M. (2023). Legal System in the Perspectives of HLA Hart and Lawrence M. Friedman. *Peradaban Journal of Law and Society*, 2(1), 51-61. Doi 10.59001/pjls.v2i1.83.
- Khairani, L., & Rahma, T. I. F. (2022). Analysis of the Role of Agents in Improving Insurance Policies at PT. Prudential Life Assurance Binjai. *Jurnal Ekonomi, Manajemen, Akuntansi dan Keuangan*, 3(2), 427-432. Doi 10.53697/emak.v3i2.509.
- Pratama, T. G. W. (2020). The urgency for implementing crytomnesia on Indonesian copyright law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514. DOI: 10.36348/sjhss.2020.v05i10.001.
- Pratama, T. G. W. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian dan Penelitian Hukum*, 4(1), 65-83. <https://doi.org/10.37631/widyapranata.v4i1.583>.
- Sari, A. M., & Rahma, T. I. F. (2022). The Role of Agents in Increasing Sharia Insurance Customers at PT. Askrida Syariah Insurance Medan Branch. *Jurnal Ekonomi, Manajemen, Akuntansi dan Keuangan*, 3(2), 433-444. Doi 10.53697/emak.v3i2.511.
- Widodo, W., & Galang, T. (2019, October). Poverty, Evictions and Development: Efforts to Build Social Welfare through the Concept of Welfare State in Indonesia. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (pp. 260-263). Atlantis press. Dx.Doi.Org/10.2991/Icglow-19.2019.65.
- Widodo, W., Budoyo, S., & Pratama, T. G. W. (2018). The role of law politics on creating good governance and clean governance for a free-corruption Indonesia in 2030. *The Social Sciences*.