

LEGAL AND ETHICAL ASPECT OF DOUBLE INSURANCE IN INDONESIA: A LITERATURE REVIEW

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Abstract- This paper examines the existence of legal as well as ethical aspects of marketing particularly in the insurance sector. The matter discussed in this paper is concerning double insurance practices whereas marketers within certain insurance companies still satisfy their customer with certain insurance coverage to any loss that is already covered under another insurance product with goal to gain profit from a claim. Insurance industry shows promising future recently. Nonetheless certain practices seem to break the rules. Among others is double insurance practices. Basically this is prohibited under Indonesian commercial code but somehow is still in practice nowadays. To avoid illegal as well as unethical activities concerning double insurance practices, it is required that Indonesia have National Database of Insurance Coverage where all coverages are registered under one system by which an insurance company may avoid double insurance prior to underwriting certain risk. This research is a literature research covering literature as well as regulation enforceable in Indonesia as well as other countries for comparison. The research shows that coordination of benefit and co-insurance mechanisms are allowed mechanisms of double insurance while the other mechanisms are prohibited. Principle of contribution and subrogation well known in insurance to avoid any loss caused by waiver and estoppel arisen from a double insurance practice. In managerial ground, ethical code of conduct as well as its application and evaluation is mandatory to avoid any possible flaw concerning double insurance.

Keywords: Misrepresentation; Double Insurance; Marketing Ethics

1. INTRODUCTION

Insurance sector is significantly increasing amid pandemic Covid 19. Insurance Statistic 2020 (Otoritas Jasa Keuangan, 2021) shows promising statistics in the insurance industry prior to Covid 19 but the record went stagnant during the pandemic. General Insurance Companies were able to collect an increasing number of premiums during 2016 to 2019 but then there was no significant achievement afterward. The 60 trillion Rupiah of premium achieved in 2016 was increased to 80 trillion Rupiah in 2020 but the amount was decreased the following year. This fact goes alongside the life insurance sector. Life insurance companies covered 46,9 up to 47 million people during 2016 up to 2020. One interesting fact is that amid the stagnant number of covered people, the sum insured is increasing.

This publication by the Indonesian Financial Services Authority shows that insurance companies still have an opportunity to increase their income from premiums payable by either existing or new customers. This opportunity is also supported by the fact that the casualty of pandemic Covid 19 is decreasing and the economic condition is getting better. Normally insurance policy is available for sale through the sales force of Insurance Company. Besides sales forces, an insurance company may also enter into an agency contract with another

company to act as agent of the insurance company to sell insurance policies issued by this insurance company. On the other hand, individuals or corporations may enjoy the services of a brokerage company to consult appropriate and necessary insurance policies that fulfill their needs and allocated funds. This goes further alongside development in information communication technology that enables those who need insurance to seek for insurance coverage through insurance technology either using internet or available mobile application as widely advertised throughout social media platforms nowadays.

A threat in Indonesian insurance sector is insurance literacy. Many recent researches show worrisome result. For example, research conducted by Lantara and Kartini (2015) among students of Gadjah Mada University shows how low the literacy among students is. Among Indonesian small and medium enterprises, financial experience brings significant impact to financial behavior in comparison to financial literacy (Purwidiyanti & Tubastuvi; 2019). These results should encourage Indonesian Government particularly regulatory institution in Indonesia to increase financial training that hopefully may bring significant impact to financial literacy as suggested by Amidjono, Broock and Junaidi (2016) as well as suggested based on the result of the research conducted by Lopus, Amidjono and Grimes (2019) as well as Dewanty and Isbanah (2018) based on the result of their research upon poor people and Indonesian woman respectively.

One recent issue in insurance marketing is a tagline of “insurance is savings”. Certain insurance sales forces use this tagline to sell their policy saying that the policy provided by this particular insurance company is as dynamic yet easy as saving funds in a bank. This is a clear violation of insurance principles in comparison to banking. Customers surely may not purchase an insurance policy and hope that they can make withdrawal of the paid fund whenever and wherever they want as if they make a saving in a bank. In other cases, certain sales forces offer a benefit of double insurance where a person can be covered by more than one health insurance policy for one insurable interest and one exactly similar benefit. Claim for this policy may be submitted by providing the copy of payment receipt issued by a hospital, even if the receipt clearly stated that the hospital bill is already paid by another insurance company.

This research is aimed to figure out to what extent does multiple insurance coverage for one single insurable interest legal or illegal, based on Indonesian rules and practices in the insurance sector as it is still put on sale to Indonesian customer despite it is forbidden by article 252 of Indonesian Commercial Code. Publication in Indonesia concerning any research within the topic of double insurance is not found yet perhaps because it is forbidden by laws, while abroad there are some articles discussing double insurance as further cited and discussed within this article. Managerial impact of this research is overviewed particularly in relation to ethical insurance marketing covering superior as well as subordinates’ commitment within.

2. RESEARCH METHODOLOGY

To seek answers for problems stated within this paper, library research is elected and performed ranging from regulations, concepts as well as case studies published within books or articles. This research is performed to gather related legal and ethical materials to further be applied to the matter discussed and analyzed qualitatively. Firstly, this topic of double insurance is discussed under Indonesian Insurance Law perspective. Furthermore, besides practices in Indonesia, applicable rules as well as concept in other countries are put to consideration. This is a prescriptive research aimed to seek and further provide solutions both in micro and macro aspects of insurance business particularly insurance marketing.

3. RESULT AND DISCUSSION

3.1. Insurance and Double Insurance

According to article 1 of Indonesian Insurance Act (Undang-undang Perasuransian no 40/2014), Insurance is an agreement between two parties, insurance company and policy holder, as basis of a premium payment receipt by insurance company in exchange to:

- a. Indemnify the insured or policyholder upon certain lost, damage, cost, lost benefit, or legal liability to third party that may be suffered by the insured or policyholder upon uncertain particular (*onzeken vooraf* or *evenement*); or
- b. Provide payment based on the death of the insured or payment based on a certain period of insured life for a sum of money as stipulated or based on discretionary fund management.

Based on the provided definition, the main agreement of an insurance contract is about indemnifying the insured or policyholder upon an uncertainty that is stipulated within an insurance contract or policy (Merkin, 2022). For example: in general insurance, building insurance covers any damage that a building may suffer p.e. fire or earthquake, that happens uncertainty. This so-called principle of indemnity (Rejda and McNamara 2017) avoids insurance agreements to be considered as gambling. It is clear that people gamble to seek profit upon uncertainty while as aforementioned, insurance companies indemnify the loss suffered by the insured or policy holder.

Indemnifying is incomparable to repayment or compensation. Insurance company in brief suffer the suffering of an insured party. Economically, it is not allowed to claim any other than actual lost under an insurance policy. Insurance company is obliged only to indemnify actual lost suffered by an insured. Insurance is not a payment of compensation either. Although recently there are a lot of insurance products that provide indemnification of unpaid income during medical treatment, actually this is additional coverage of a health insurance and is rather payable based on the result of insurance fund management, than as indemnification of unpaid income during medical treatment.

Article 252 of Indonesian Commercial Code stipulated as follows: Except otherwise stipulated by the code, second insurance is not allowed upon a certain similar period, event, or goods that is fully insured, under the consequences that the second insurance is void. Based on this rule, double insurance in Indonesia is not allowed. Nevertheless, this article opens some possibilities for the second insurance to be allowed.

3.2. Misrepresentation in Insurance Industry

Similar to all other contracts, insurance contracts must also be agreed based on the principle of utmost good faith (*uberrimae fidei*) (Huda; 2017). Article 251 of Indonesian Commercial Code states that every statement that is erroneous or fallacious including failure to make any statement that may cause the agreement not to be agreed or at least not to be agreed that way, may void the insurance coverage. Under the perspective of the insured or policy holder, this principle is understood this way; every situation as well as risks bound by the insured, policy holder, or the insurance object must be disclosed at the time of negotiation prior to agreement. On the other hand, the insurance company or parties acting on behalf of the company must state all requirements whether based on regulation and/or insurance policy, so their customer may come to a decision whether to buy the policy or not. In Malaysia, for comparison, insurers or people within have a so-called pre-contractual duty that is enforced even there is no insurance contract yet (Thanasegaran 2016; 27).

Failure to fulfill the requirement of utmost good faith in insurance contract may among others be considered as misrepresentation. Misrepresentation is defined as an act of providing

erroneous information within an insurance contract and any letters prior to the contract. To be qualified as misrepresentation, at the insurer's side, this erroneous information must significantly impact the decision whether to buy or not to buy a certain insurance policy. Misrepresentation may cause the insurance contract to be null and void should this misrepresentation be made concerning a material aspect of a coverage, instead of just formal misrepresentation.

At the policyholder side, misrepresentation may occur when a policy holder fails to disclose any information that may cause the underwriting process resulting in premium price and insurance coverage (Merkin, 2022). For example, when a policy holder failed to disclose the correct medical record that brings impact to payable premium of a health insurance, or failure to disclose the real condition of a vessel for a more affordable price of payable premium. These are considered as misrepresentation and the insurer may terminate the insurance coverage completely or waive certain coverage. On the other hand, misrepresentation may occur when a representative of an insurance company explains the coverage as well as other procedures incorrectly, such as premium payment and claim procedure, primary and additional benefit, exemption of coverage, and so forth. One single but massive problem with this matter is concerning the lack of reading and understanding for Indonesian. It is easy for Indonesians to accept something without reading it properly about the thing. This matter requires a specified separate research. Indonesian Insurance Act (Act 40/2014) prohibits misrepresentation in article 31. Further in article 75 The Act imposes fine up to five billion Rupiah as well as up to five years' imprisonment for those within insurance companies who commit misrepresentation.

3.3. Coordination of Benefit and Co insurance

The possibility of double insurance occurs if an evenement is not fully insured. For example: in vehicle insurance, should a vehicle be covered by a total loss insurance, it means that the insurance company will not indemnify when the vehicle suffers certain damage that based on the insurance policy is considered as minor damage. Under this consideration, the policyholder may purchase another vehicle insurance policy covering any loss that is not considered as total loss.

Another example is in health insurance. Indonesian Health Social Insurance named BPJS Kesehatan provides health insurance coverage with affordable premiums. As a consequence, the coverage is also minimal. For those who are covered by BPJS Kesehatan and want to enjoy more convenient medical services, they are allowed to purchase another health insurance policy provided by any other insurance company to cover any claims that are beyond the coverage of BPJS Kesehatan (Sabrie *et al*; 2020). This scheme is allowed under article 277 of Indonesian Commercial Code as the BPJS does not fully cover all healthcare treatment.

From these prior examples, if those insurance companies are coordinating with each other then it is considered as coordination of benefit (COB) scheme. Without such coordination, the insured has more flexibility to use coverage on their choice for certain evenement. On the other hand, the premium will not be efficient. This COB scheme allows two or more insurers to coordinate their benefit to each other by which they will share the risk as well as the premium so the policyholder may pay a more affordable amount of insurance premium. In Indonesia, some insurance companies selling health insurance already coordinate their benefit with BPJS Kesehatan so that their policyholders buy insurance policies that cover benefits of BPJS Kesehatan as well as covered by this insurance company for benefits beyond the coverage of BPJS Kesehatan.

Beside coordination of benefit, there is another possibility where an evenement is covered by more than one insurance. It is called co insurance (Merkin 2022). This happens as

an impact of differentiation in the Indonesian insurance sector. In Indonesia, insurance companies based on their coverage are divided into two groups namely general insurance company and life insurance company. The duty of each of these companies is stipulated in the aforementioned definition of insurance based in Indonesian Insurance Act. The duty to indemnify the insured or policyholder upon certain lost, damage, cost, lost benefit, or legal liability to third party that may be suffered by the insured or policyholder upon uncertain particular is the duty of general insurance company, while to provide payment based on the death of the insured or payment based on certain period of insureds life for a sum of money as stipulated or based on discretionary fund management becomes the obligation of life insurance company. Nevertheless, both types of insurance companies may provide health insurance.

Under this separation, two or more insurance companies may co-insure under one single policy. For example: in life insurance, a life insurance company covers the death of an insured whether under natural cause or caused by personal accident. A life insurance company is not allowed to cover personal accidents as it is the scope of a general insurance company. That's why this life insurance company made an agreement with a general insurance company to insure its policyholder under its life insurance policy. The policy holder holds only an insurance policy issued by the life insurance company without knowing that a certain part of the coverage is covered by another insurance company.

The main difference between coordination of benefit and co insurance scheme is that within a co-insurance a policy holder holds one single insurance policy while in coordination of benefit a policy holder holds two insurance policies provided by two different insurance companies that coordinate with each other. Under this statement, a reinsurance is also considered as coordination of benefit whereas under a reinsurance contract, an insurance company may reinsure a risk entirely as well as partially. Should a benefit be reinsured partially then this particular benefit is covered by insurance company as well as reinsurance company under certain limitations regarding the scope such as the limit of benefit payable to the insured or policy holder.

Another case that seems like to be double insurance but is actually not a double insurance is insurance that covers flight accidents. In Indonesia, the victims of an aircraft accident or their lawful relatives receive both benefit from social accident insurance provided by Jasa Raharja as well as from any other insurance as provided by the carrier. This is not double insurance as the regulation says so. Secondly, based on the insurance product coverage and the insured party, it is clearer that this is not a double insurance practice. First insurance, the social accident insurance provided by Jasa Raharja, covers the passengers as the insured, by which should any accident occur then Jasa Raharja shall indemnify the loss suffered by the passengers. On the other hand article 141 of Indonesian Air Transportation Act (Undang-undang Penerbangan 1/2009) mandates air carriers to be responsible for any loss within their aircraft. For this purpose, air carriers purchase insurance that cover their third party responsibility within which the carrier is the insured, so it is clear that flight insurance does not directly cover the passenger but instead the carrier for their third party responsibility.

Beside co insurance and coordination of benefit, any other form of double insurance is strictly prohibited. First reason is that this practice breaks the principle of indemnity. The basic principle of insurance is an agreement to indemnify the loss suffered by the insured or any other beneficiaries. Further in life insurance, the insurance company will pay a sum of funds when a certain condition occurs, with any additional invested fund should the insurance product be embedded with certain investment such as unit link. Under this principle, the insured is not allowed to gain profit arising from claim payment with exception to aforementioned investment gain. For example: in health insurance, no one is allowed to enjoy full indemnity for their

medical expenses and at the same time enjoy another full reimbursement under another insurance product for the same event. Further in any event regarding general insurance covering either property or title, such as car or vessel accident, the purpose of insurance is to indemnify the loss suffered from such accident, not to bring profit to the insured or policyholder from this event.

The second reason is related to gambling. Insurance contracts are closely connected to gambling activity. Article 1774 of Indonesian Civil Code qualified insurance contract, lifelong interest agreement and gambling, as opportunity based agreements. Insurers have been struggling for a long time to explain the difference between an insurance agreement and gambling using the principle of indemnity explained previously in comparison to gambling. For this purpose, gambling is understood as the winner takes all principles whereas in a gambling activity the winner will take all the bids placed by those who are losing. This meaning is broadened to cover the activity of an arcade gambling where a winner, as a single player may win a sum of money or similar to it after placing a bid and playing. Double insurance may bring insurance practices to gambling. When people buy an insurance policy for the purpose of enjoying a certain amount of money more than what they suffer, they may be considered as conducting gambling activity. Under the perspective of law, this is not only breaking the regulations on insurance but also the prohibition of any gambling activity throughout Indonesia.

3.4. Managerial Aspect on Ethical Marketing

In brief, marketing is defined as activity of meeting needs profitably (Kotler and Armstrong; 2018). In longer words, marketing may be defined as the process by which companies engage customers, build strong relationships, and create customer value in order to capture value from customers in return (Kotler and Armstrong 2018; 29). Marketing is not simply selling stuff. Marketers create strategies that are driven by customer value. That's why the performance of a marketer is not assessed from the company's profit but instead from customer's satisfaction.

This satisfaction sometimes drives marketer to misconduct either under the perspective of law, or ethical perspective. Bribery, price markup, and other additional services for customers are examples that are not hard to find in marketing activities, particularly in Indonesia. Other examples are ranging from fancy restaurants to overpriced food and beverages for the very same matter, customer's satisfaction. Marketing activities either related to government institutions or private ones sometimes cover additional services, again for the sake of customers' satisfaction.

Within the private law area, parties in contract must first know and be provided explanation upon materials agreed. Further, legal parties must agree upon contract under no force. Under this regulation, the seller must disclose everything about the goods or services to sell. Under Indonesian law, a contract is null and void should objective requirements are not fulfilled, pursuing Article 1320 of Indonesian Civil Code. These objective requirements covering clear consent or agreement made by parties, and ability of the parties to perform any legal action such as making an agreement.

Immanuel Kant, a German Philosopher, said that one cannot be good without first doing good. In his arguments concerning duty (*pfllichtlehre*) under the term of categorical imperative (*kategorischer imperative*) or fundamental obligation (Hartman *et al.*; 2018), also known as deontological ethics where "deon" means obligation in Greek, Kant argued that people do good as an obligation prior to resulting something. To consider a conduct as good conduct is based on whether someone does good already or not. Kant says that human beings as rational beings

have authority to decide a conduct as good, without being limited to religious or legal order (Ferrel *et al*; 2017).

Under the perspective of Kantian duty or obligation based ethics or sometimes understood as deontological ethics, marketing activities are not limited only for fulfilling the customer's needs and helping the company to make profit from that. Marketing activities also cover ethical behavior where marketer also are also acting based on their duty or obligation to be good, not only according to religious and legal perspective but also ethical perspective. Citing Kant again, one cannot be good without first doing good.

In the insurance sector, there are ethical issues, some are mentioned herein. One of the ethical issues brings trouble concerning an investment embedded insurance program called unit link. Insurance marketer claims that unit link is a product where the insured may save their money in insurance companies as easy and simple as they save their money in a bank while the fact is not that easy and simple as we know that insurance is not a saving that we may withdraw anytime. Another matter is about double insurance discussed within this paper.

These two misconduct is presumably performed because less people in Indonesia are familiar with insurance. Instead of educating deeply concerning insurance, insurance companies benefit from the value of hassle free insurance procedure by providing an insurance product of unit link saying that it is similar to saving in a bank. Also instead of educating people, insurance companies concentrate more on those who are already familiar with insurance by providing those who already buy certain insurance products with secondary insurance protection for the same interest.

There is an ethical dilemma found within employees concerning marketing activities. On one hand, employees with conscience at first chance are willing to report any misconduct that occurs in their activities. On the other hand, reporting any misconduct may risk their life in respective companies where misconduct is part of their business process. The risk is either being retaliated by the superior with authority or by their peers, either way is bad for their life for it may cause loss of job. Whistle blowing systems within companies are good to look at from the outside but not so good from the inside (Conrad 2018; 174).

Besides by the employee, ethical culture within a company must also become part of any managerial duties to uphold. As there is a Latin proverb saying "*talis grex quails rex*" or as the flock so the king, these two groups namely the subordinates and the superior bring impact to one another. Nevertheless, ethical subordinates may only be authorized to bring impact to their peers and risk their life in the company as well as private life for retaliation while an ethical superior has power and authority to apply ethical culture within their company. Under the superior perspective, this ethical culture is necessary first to run the company better by broadening their aim not only to profit but also to governance with value (Vaduva *et al* 2016; 20). This is necessary as shareholders are recently more concerned with ethical values of a company prior to their investment decision as they are more concerned of potential flaws of a company (Ferrell *et al*; 2017). As result, ethical value may impact the stock price.

Ethical code of conduct is necessary not only to secure an ethical environment within a company, but also to meet requirements within regulations concerning good corporate governance. In a business environment, this ethical value may also increase the value of a brand among their customers that in turn may increase customer's loyalty. At least this is proven in the telecommunication sector in Palestine (Nassar and Battour; 2020).

Insurance practitioners beside have an obligation to uphold the ethical code of conduct stipulated by the Association of Experts in Insurance Management in Indonesian must also uphold the ethical code of conduct stipulated by the Insurance Company where they work. For that purpose, any insurance company must enact this code of conduct covering the entire

company regardless of the position whether management or employee. To assure the enforcement of this code, there must be a specified department in whatever name it could be. As suggested, any department with responsibility to ensure good corporate governance may also be responsible to enforce the code of conduct within the company.

3.5. National Database of Insurance Coverage

The existence of a double insurance does not automatically void an insurance contract. What happens to insurance contracts containing double insurance pursuant to applicable rules in a state. In general, an insurer may bring this matter for a court injunction or termination of contract and coverage based on court decision. Another possibility is that the insurance company may waive certain coverage or terminate the entire insurance coverage stipulated in the insurance contract as long as these actions are allowed in the contract.

American as well as English marine insurance practices provide another way out based on the principle of contribution or also called contributory principle. In general, the principle of contribution or contributory principle in insurance stipulates that should an insurable interest be covered by more than the insurer, the insured may request the insurers altogether to contribute in claim payment, still not to exceed the loss (Merkin 2022). Based on this principle, an insurer may also demand any other insurer, covering the same interest, to contribute in claim payment. Second verse of article 32 Marine Insurance Act 1906 stipulates as follows:

Where the assured is over-insured by double insurance—

- a) The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;
- b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;
- c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy;
- d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves.

Another way out, the insurer, after making claim payment, may also demand payment from other insurer covering the same interest under principle of subrogation. Under this principle, should an insurer already fulfill the claim of an insured, this insurer retains the right to seek payment from any third party regarding this interest (Rejda and McNamara 2017; 193). For example, in a car accident, should an insurance company already pay the claim submitted by the insured or policy holder, this company is entitled to remedy payable by another party regarded as the cause of such accident, either this remedy comes from another insurance company, or any other entity. Should this come from an insurance company, then the principle of contribution is performed.

These two principles may only be properly as well as easily executed when there is a National Database of Insurance Coverage. This national database is similar to Debtor Information System provided by Bank Indonesia, as now upgraded to Financial Information Services System (FISS) provided by Indonesian Financial Services Authority. One thing that makes it different is that the FISS contains information concerning debtors while the national database of insurance coverage contains information concerning coverage insurance upon someone or an entity.

Another way to integrate the database of insurance coverage is through insurance policy guarantee institutions. In Singapore, there is a mechanism called Policy Owners' Protection Scheme. This protection is provided and managed by Singapore Deposit Insurance Corporation (SDIC). The database of this protection scheme is available to use as a database of insurance coverage. In comparison to Indonesia, Indonesian Insurance Act mandates this policy guarantee program under article 53 but this protection is yet to come as legal basis of this effort is just enacted as Act 2023. Based on this newly enacted Act, Indonesian Deposit Insurance Corporation or LPS (Lembaga Penjamin Simpanan) has further coverage to insurance policy so it is now easier to build the database. Hopefully in the near future this database shall come to existence.

4. CONCLUSION

As conclusion, apparently there are two possibilities for double insurance namely co insurance and coordination of benefit. Other than that, double insurance is strictly prohibited. Should a double insurance occur, the insurance contract may be void or as long as stipulated within the contract, the insurance company may waive certain coverage or conduct estoppel. An alternative way out is executing the principle of contribution and subrogation.

To avoid the practices of double insurance, among others, is by building a national database of insurance coverage so any insurer may have access to existing coverage of a person or entity prior to underwriting. Another way to avoid double insurance is by providing code of conduct in insurance marketing activities particularly concerning ethical marketing. This code of conduct may be enforced by any professional association as well as by a board covering a specified insurance company. For the meantime, board of commissioners or any board with similar authority on supervising good corporate governance of an insurance company may broaden their coverage to also supervise the implementation of ethical code of conduct.

This research result is applicable in insurance companies particularly throughout Indonesia under current Indonesian law. The result may be different should there are changes in insurance law particularly Indonesia's. Further empiric research is suggested to figure out how and why Indonesian purchases double insurance coverage for a similar event covering full lost.

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