

# Legal Protection Consumers Associated with Insurance Regulations Especially Claims Settlement in Indonesia's Economic Development (Case Study of Marine Hull Insurance)

Marihot Simanjuntak<sup>1\*</sup>, Wiwik Sri Widiarty<sup>2</sup>, Eddy Damian<sup>3</sup>

<sup>1, 2, 3</sup> Doctor Of Law Department, Universitas Kristen, Indonesia

Email: mariohsimanjuntak66@gmail.com<sup>1</sup>, wiwik.widiarty@gmail.com<sup>2</sup>, eddy5226@gmail.com<sup>3</sup>

corresponding author: mariohsimanjuntak66@gmail.com<sup>1</sup>

## ABSTRACT

The focus of the problems studied in this study, namely how the law is just for consumers and how to settle claims that are fair and what are the benefits of renewal or Novelty for consumers and insurance industry players that can help the development of the Indonesian economy. The method used in this study is a normative judicial approach, and the type of research chosen is descriptive analysis. The claims mechanism is determined by the insurer from the beginning and agreed upon at the end of the ship's hull and machinery insurance. Both parties need to understand in detail the contents of the ship's hull and machinery insurance policy, which is derived from the Marine Insurance Act 1906, as a document or evidence of the occurrence of a marine transport insurance agreement for legal risks that may arise during transportation. Both parties can foresee the future.

**Keywords:** Claim, Marine Hull Insurance, Legal

## INTRODUCTION

Based on cases that occurred in the vast ocean, the mode of fraud in Marine Hull insurance is generally divided into two:

1. Consumers or perpetrators report the sinking of the ship due to storm damage.
2. Perpetrators report losses suffered due to lost goods on a sinking ship, where the indications of ship ownership documents and also containers of goods are fake documents, because sinking or burning ships are difficult to verify in the middle of the ocean, but there are also cases that ships are sold stripped down first.

In the legal cases that occurred at PT Asuransi Harta and PT Asuransi Purna Artanugraha as follows:

With regard to consumer legal protection and insurance regulations, especially the settlement of marine hull insurance claims in Indonesia, in practice there are two cases of insurance claims that are decided differently by judges in court, which are as follows:

1. Insurance Claim Case between PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement. In this case, PT Asuransi Purna Artanugraha rejected the claim submitted by PT Bumi Shipmanagement. The ship belonging to PT Bumi Shipmanagement caught fire in the middle of the sea around Nicobar Island. As a result of the rejection of claims from PT Asuransi Purna Artanugraha as the Insurer, this Marine Hull and Machinery Insurance claim continued to the Central Jakarta District Court in 2013, the Jakarta High Court in 2014, and the Supreme Court (cassation) in 2015. In the Central Jakarta District Court Decision to the Cassation Decision The Supreme Court, PT Asuransi Purna Artanugraha was sentenced to pay a Constructive Total Loss insurance claim of US\$ 3,000,000 and Increased Value Insured of US\$ 1,000,000 and paid a moratorium interest of US\$ 1,440,000.

2. Insurance Claim Case between PT Pelayaran Manalagi and PT Asuransi Harta Aman Pratama Tbk. Problems arose between PT Pelayaran Manalagi and PT Asuransi Harta Aman Pratama, Tbk because the insurance company

rejected the ship fire claim submitted by PT Pelayaran Manalagi. In fact, the company from Surabaya is bound by an insurance agreement with the Marine Hull and Machinery Policy which is valid for a year starting October 31, 2005. PT Pelayaran Manalagi then demanded compensation of US\$843,200. The value was obtained from the reduced claim value of US\$ 1.2 million minus the cost of selling the wrecks worth US\$ 356,800. The insured party also demanded compensation for the potential lost profits in 2007-2009 amounting to US\$14.396 million.

PT. Pelayaran Manalagi's lawsuit was won at the District Court and Appeals level, so the insurance company was then sentenced to pay the sum insured and a number of other costs. However, the decision of the High Court was overturned by the panel of judges at the Cassation level who accepted it insurance company exception. The main exceptions raised are related to the law used. As stated in the agreement, the law used is English law. So the insurance company assumes that the material and formal law must be based on English law, which means that it must be submitted to the Court in England, not in Indonesia.

Thus, from the two cases of Marine Hull And Machinery Insurance above, the Insured as the insurance consumer prefers to settle disputes in the general court environment. On the one hand, the Insured is won or his claim is granted by the Panel of Judges, and on the other hand, the insurance company as the Insurer has his claim granted by the Panel of Judges. In these two different cases, it can be said that the Insured if his claim is not granted by the Insurer (Insurance Company) prefers the legal route rather than a settlement by deliberation with the Insurer. This makes the settlement of insurance claims can drag on even years. In this case there is also a gap that occurs, where on the one hand the policy contract is required to use English Law, while the case that occurs concerns insurance issued by a policy in Indonesia.

The Insurance Agreement (Contract of Indemnity) takes place between two interested parties, namely between the Insurer (Insurer Underwriter) and the Insured (Assured). Insurance institutions with all their aspects, have a very broad influence in economic activity because insurance is one of the stability against all possible losses that arise.

The role of the Financial Services Authority (OJK) is very important in regulating and compiling several better OJK regulations and creating dreams and goals

a broader and longer-term reality in responding to insurance in the corridor regulated in Law Number 40 of 2014 concerning Insurance and its implementing regulations.

If observed, OJK's vision To be a trusted regulator of the financial services industry, protect consumers and the public interest, and make the financial services industry a pillar of the national economy that is globally competitive and that promotes public good.

The role of the Financial Services Authority is needed to regulate how to handle legal cases either through the International, National Arbitration process rather than choosing the court route.

Law 30 of 1999 concerning Arbitration, where Arbitration provides convenience for the parties in the process of resolving claim disputes, where both parties enter into an agreement that when there is a problem, the dispute resolution is prioritized to settle a claim dispute before an agreed Arbitration body and on the policy it is stated nomination of the arbitration body which is the choice of both parties, so that: a. Confidentiality of the claim dispute of the parties is guaranteed because the trial is closed, b. Delays caused by procedural and administrative matters can be avoided. Another content is that the Petitioner and Respondent can appoint their representatives who understand more about shipping insurance, because they have special expertise. So that the concept of economic development in Indonesia becomes transparent because it has legal certainty, legal benefits and justice, which will open up opportunities for foreign parties to invest heavily, especially in the shipping sector as a mode of sea transportation both export, import and passenger carrier.

To avoid multiple interpretations in Consumer and Insurance. Therefore, knowledge of the settlement of Marine Hull Insurance claims is required, because often the insured who binds himself to this insurance agreement does not understand the rights that should be obtained as an insured in the Marine Hull Insurance Agreement, as well as the obligations that must be met.

No.	Title	Research purposes	Research result
1.	Consumer Protection in Indonesia: A Study on the Need for Product Liability Insurance	<p>1. To find out and analyze that product liability insurance has an important role in protecting the interests of consumers.</p> <p>2. To know and analyze and understand the mechanism in product liability insurance in Indonesia.</p> <p>3. To find out and analyze legal reforms to realize product liability insurance in Indonesia.</p>	<p>1. With product liability insurance, the burden of producers to compensate consumers for consuming the products they make has shifted to the insurance company.</p> <p>2. Product liability insurance is an important mechanism in consumer protection.</p>
2.	Standard Clause: Paradox in Law Enforcement of Consumer Protection	<p>1. Knowing how the development of thinking about standard consumer protection clauses in Indonesia 1980-1999</p> <p>2. Knowing the implementation of standard clause settings in terms of consumer behavior and the behavior of business actors.</p> <p>3. Knowing the effectiveness of supervision and dispute resolution of standard clauses in protecting consumers.</p>	<p>1. The idea of setting standard clauses in the relationship between consumers and business actors in Indonesia existed long before the Consumer Protection Law was passed in 1999.</p> <p>2. Consumers who already know their rights will not necessarily be aware of when their rights can be used and how they can be exercised.</p> <p>3. In the aspect of legal awareness, public participation in the supervision of standard clauses can only be carried out if consumers file a lawsuit to the court.</p>
3.	Investment-Based Insurance Arrangements in Relation to Legal Protection for Policyholders in Indonesia.	<p>1. To identify the concept of investment-based insurance in Indonesia in relation to legal protection for investment-based insurance policyholders.</p> <p>2. To analyze the legal protection for policyholders in Indonesia.</p> <p>3. To analyze the validity of investment-based insurance agreements made by insurance companies.</p>	<p>1. Insurance arrangements in the Insurance Act are dual system insurance, in which there are two insurance concepts, namely conventional insurance and sharia insurance.</p> <p>2. Legal protection for policyholders in a preventive manner. 21 of 2011 concerning the Financial Services Authority, POJK Number: 1/POJK.07/2013 concerning Consumer Protection and POJK Number 1/POJK.07/2014 of 2014 concerning LAPS.</p> <p>3. POJK which is used as the basis for allowing insurance institutions to sell investment-based insurance is related to a higher norm, namely delegation from the insurance law.</p>

4.	Legal Protection of the Insured in Payment of Life Insurance Claims	<p>1. Explore the form of legal protection for the insured in life insurance claims.</p> <p>2. An Analysis of the Liability of Insurance Companies in the Settlement and Payment of Life Insurance Claims.</p> <p>3. Identify the form of dispute resolution and the differences between the elements of sharia and conventional insurance premiums.</p>	<p>1. The form of legal protection for the insured in the payment of life insurance claims, if the insurer defaults in the form of not carrying out the performance as agreed in the insurance policy, namely not providing insurance claim payments to the insured in accordance with the amount insured, then the insured Legal action can take the following forms a lawsuit through the courts or resolve through the existing mechanisms in the life insurance policy.</p> <p>2. The responsibility of insurance companies in paying life insurance claims has been regulated in several legal provisions, both in the Consumer Protection Act, the Civil Code, the Commercial Law and the Insurance Business Law. This responsibility is a legal responsibility born from a life insurance agreement. The obligations of the insurer to the insured is to pay a life insurance claim in accordance with the amount of coverage stated in the life insurance policy.</p> <p>3. The form of dispute resolution payment of life insurance claims between the insured and the insurer, in principle the procedure for resolving disputes between the insured and the insurer in the payment of life insurance claims is generally resolved through an arbitration institution in accordance with the clauses in the policy, but if the policy is not specified by the institution whichever resolves the dispute can then file a legal action at the District Court or a dispute resolution institution outside the court.</p>
5.	Legal Protection of Insurance Policy Holders Against Motorized Vehicles in Crossing Transport	<p>1. Analyzing Legal Protection in Insurance</p> <p>2. Identifying forms of responsibility in transportation</p>	<p>1. The legal protection of the policy holder in the motor vehicle insurance agreement in terms of insurance law in general, namely if an event (uncertain event) occurs that causes a loss, then based on the standard motor vehicle insurance policy the insured or the policy holder is entitled to compensation.</p>

			2. The insurance company is responsible for the losses suffered by the policy holder as a result of not providing correct information to the policy holder, thus creating uncertainty for the policy holder.
6.	Legal Protection for Online Insurance Policy Buyers	Analyze and find out the legal protection for the insured who closes the insurance agreement online and the role of OJK in online insurance supervision.	Legal protection for insurance customers who buy insurance online is protected by Law No. 40 of 2014, the consumer protection law, BW, KUHD Commerce and Law No. 11 of 2008 concerning ITE, it can be concluded that online insurance policies as electronic documents have its existence is recognized as valid legal evidence in its original form or printout. all types of insurance businesses as long as they meet the requirements of the procedures regulated by the OJK, starting from the formation of an online insurance business to online transactions that produce electronic policies. cooperatives and joint ventures.

In several countries at the ASEAN level, specific knowledge is needed regarding the settlement of Marine Hull Insurance claims, because often the insured who binds himself to this insurance agreement does not understand the rights that should be obtained as an insured in the Marine Hull Insurance Agreement, as well as the obligations involved must be fulfilled in order to obtain these rights, including in the case of submitting a claim to the insurer. The Marine Hull Insurance Agreement in its written clause always uses English law, but in fact there are cases where the court always refuses to be tried in Indonesia, but there are also those who try the case in Indonesia using Indonesian law.

The existence of previous studies, it can be concluded that no one has specifically conducted the same research as the title of the research that the author did, so this research is feasible to be carried out by the author.

**Formulation Of The Problem**

In connection with the background of the problem and to find out more about the Settlement of Marine Hull Insurance Claims, the problems formulated in this study as follows:

- a. How is the consumer's legal protection to be fair in Marine Hull Insurance in Indonesia?
- b. What are the responsibilities of fair insurance and claim settlement in Marine Hull Insurance in Indonesia?
- c. How and what are the benefits as novelty/renewal in consumer protection and insurance regulations in Indonesia, to support the development of the Indonesian economy?

**METHODOLOGY**

The writing of the journal uses the normative type of judicial research. The type of normative juridical research basically has the aim of reviewing applicable laws and regulations and linked to theoretical concepts, and is related to the problems in the subject matter of this journal. The problem approach used as a discussion statutory, conceptual and case methods are used

in this journal. Legislative approach, which is looking for solutions to the formulation of the problem proposed by basing it on the provisions of legislation and regulations in Indonesia. Conceptual approach, which is an approach to solving problems by referring to relevant legal concepts and principles. Case approach, which is solving problems by referring to other cases similar to the cases studied in this journal. The data needed in this thesis research were collected through data collection methods in the form of library research and interviews.

## RESULTS AND DISCUSSION

### 1. Theory of Justice

At the end of the 20th century, the American philosopher John Rawls proposed several concepts of justice, such as the theory of justice, political liberalism, and the law of nations, which had a considerable impact on the discussion of the value of justice. And the concept of "veil of ignorance", translated by John Rawls, is that each person faces the closure of all facts and situations about himself, including certain social positions and teachings, thereby obscuring the concept of developmental justice or knowledge. With this concept, Rawls used his theory to lead the community to obtain the principle of fairness and equality referred to as "Justice as fairness".

John Rawls is regarded as the "liberal egalitarian of social justice", and believes that justice is the main virtue of the existence of social institutions (social institutions). But the virtues of society as a whole cannot override or challenge the sense of justice of everyone who attains it. Especially the weak looking for justice.

Specifically, John Rawls developed the idea of the principle of justice by making full use of the concepts in his writing known as the "original position" and the "veil of ignorance".

Rawls's point of view locates a situation in which equality and equality exist among everyone in society. Rawls's view is based on the concept of reflective equilibrium based on the characteristics of rationality, freedom and equality to regulate the "original position" of the basic structure of society.

With his theory of "justice as fairness", Rawls led the community to obtain the principle of

fairness and equality. John Rawls's point of view emphasizes that a program for justice with a populist dimension must focus on two principles of justice, namely, first, granting the broadest basic liberties equal rights and opportunities, such as equal liberties to all. Second, the ability to restructure emerging socioeconomic gaps so that they can provide mutual benefits. Therefore, the difference principle requires that the basic structure of society is arranged in such a way that the difference in prospects for access to major things such as welfare, income, power, etc. is for the benefit of the most disadvantaged. This means that social justice must be fought for two things: First, to correct

Improve the inequalities experienced by the disadvantaged by providing empowering social, economic and political institutions. Second, each statute must position itself as a guide for developing policies to correct the injustices experienced by the weak.

### 2. Consumer Protection Law:

In Satjipto Rahardjo's view, legal protection is to protect the human rights that are harmed by others and to protect the community so that they can enjoy all the rights granted by the law. At the same time, in the view of Phillips Hardjeong, legal protection is the protection of dignity and value, the recognition of the human rights possessed by legal subjects, and its basis is that the law is not subject to arbitrariness or as a collection of rules or rules. Will be able to protect one thing from another. For consumers, this means that the law protects the rights of consumers from the effects of things that make these rights unfulfillable. According to the Press Law No. 40 of 1999, legal protection is the guarantee that the government and/or society protect citizens in accordance with applicable laws and regulations to perform their functions, rights, obligations and roles. . And the legal protection contained in government regulations. Act No. 2 of 2002 on Procedures for Protecting Victims and Witnesses in Serious Human Rights Violations, protection is a form of service that law enforcement officials or security forces must perform in order to protect victims and witnesses from threats. , Interference, terrorism, violent acts, given during the stage of investigation, investigation, prosecution and/or court review. At the same time, according to Lili Rasjidi and I.B Wysa Putra, the law can play a role in achieving protection that is not only

adaptable and flexible, but also predictive and anticipatory.

utra, the law can play a role to achieve protection, not only adaptable and flexible, but also predictive and anticipatory.

### 3. Understanding Insurance in General

Insurance or coverage arises because of human needs who are always faced with something uncertain that may be profitable or even vice versa. This insurance is a term used to refer to an action, system or business that compensates for the economic protection (or economic compensation) of life, property, health, etc. from possible accidents (such as death, loss, damage or illness), This involves paying premiums regularly within a specified period of time in exchange for an insurance policy that guarantees this protection.

According to Article 246 of Chapter 9 of Volume I of the Commercial Code (KUHD), the definition of insurance is as follows:

"Insurance or coverage is an agreement in which the insurer binds himself to the insured by charging insurance premiums to compensate him for possible losses, damages or expected loss of profits due to unspecified events."

Article 1(1) of Law No. 40 on Insurance of 2014 also provides the definition of insurance, which stipulates:

"Insurance is an agreement between the insurance company and the policyholder. It is the basis for the insurance company to collect premiums in exchange for:

One. To provide compensation to the insured or policy holder for the loss, damage, expense, loss of profit or legal liability to a third party that the insured or policy holder may suffer due to abnormal events Bay. The insured or the insured due to the occurrence of uncertain events;

C. Provide payment based on the death of the insured or payment based on the life of the insured, the amount of which has been determined and/or based on the results of fund management."

According to the definition of insurance in Article 1774 of the Civil Code:

"A chancy agreement is an action whose outcome, regarding the benefits and drawbacks,

for all parties, or temporarily damaged, depends on uncertain events. These are: the insurance agreement; fork of life, gambling and betting."

The definition of insurance in the formulation of Article 1 paragraph 1 of Law no. 40 of 2014 is regulated more broadly when compared to Article 246 of the KUHD because it not only covers loss insurance, but also life insurance. Thus, the object of insurance does not only cover property, but also human life/body. This can be seen in Article 1 paragraph 25 of Law no. 40 of 2014 concerning Insurance, namely: "Objects of Insurance are life and body, human health, legal responsibilities, goods and services, as well as all other interests that can be lost, damaged, lost, and/or reduced in value."

#### 1. Elements of Insurance

There are elements of insurance, which consist of:

a. The insured (insured) is a person/entity who promises to pay premiums to the insurer, all at once or gradually. The right of the insured is to get an insurance claim, the obligation of the insured is to pay a premium to the insurer.

b. An insurer is an entity that promises to pay the insured a lump sum (indemnity) in a lump sum or in steps in the event of an event involving unspecified factors. The insurer's right is to collect premiums, and the insurer's obligation is to demand a sum of money from the insured when the agreed event occurs.

c. Insured object, in the form of property, life and death of a person, and or other interests.

d. The occurrence of risk, which is uncertain, where, when, and the magnitude of the impact of the resulting loss, which is not actually expected by the insured and the insurer.

#### 2. Insurance Agreement

In general, the validity of an agreement is regulated and must comply with the provisions stipulated by Article 1320 of the Civil Code and the articles that protect the article, namely Articles 1321-1329 of the Civil Code. Every agreement, including insurance agreement, must meet the following general requirements:<sup>7</sup>

a. Agree with those who bind themselves

- b. The ability to make an engagement
- c. A certain thing
- d. A lawful reason

The four things mentioned above should not be done because of an oversight, coercion or due to deception. As for the special conditions for the insurance agreement, it must meet the provisions in book I Chapter IX of the KUHD, namely:

#### 1) Indemnity Principle (Indemnity)

The principle of indemnity is one of the main principles in insurance agreements, Because it is the basis of the working mechanism and gives direction to the goals of the insurance agreement itself (especially loss insurance).

#### 2) Principle of Interest (Insurable Interest)

Insurable interest is the second main principle in an insurance or underwriting agreement. Each party proposing to enter into an insurance agreement must have an insurable interest, which means that the insured party has such participation in the consequences of an event that is uncertain and that the person involved suffers a loss

The principle of honesty is actually the principle of every agreement and therefore must be performed by the parties to the agreement. Failure to comply with this principle when entering into an agreement will result in a defect of will, which is the meaning of all the basic provisions set out in Articles 1320-1329 of the Criminal Code. After all, good faith is one of the main foundations of every agreement and legal basis and trust basically does not protect malicious parties.

#### 3) Principle of Subrogation to Insurers (Subrogation)

In the KUHD, this principle is expressly regulated in Article 284:

"An insurer who has paid for the loss of an insured item, replaces the insured in all rights obtained against third persons in connection with issuing the loss; and the insured is responsible for any actions that can harm the rights of the insurer against the third people."

The principle of subrogation for the insurer, as regulated in Article 284 of the KUHD above, is a principle which is is the logical consequence

of the principle of compensation. Subrogation in insurance is a statutory subrogation. Therefore, the principle of subrogation can only be enforced if the following two conditions are met:

- 1) If the insured has rights to the insurer, he still has rights to third parties.
- 2) The right arises because of the occurrence of a loss.

#### 3. Importance of Policy in Insurance Agreement

A policy as a written document plays a very important role in an insurance agreement because the rights and obligations of the insurer and the insured are contained in this policy. In the insurance law literature, legal experts remind prospective insurance policy buyers to really read the policy, because the policy as a form of insurance agreement has its own characteristics when compared to agreements in general.

According to the provisions of Article 255 of the KUHD, the insurance agreement must be made in writing with a deed, which is given the name of the policy, This policy serves as documentary evidence. For both parties, the insured and the insurer, the policy has a great or very important meaning. Because the policy is perfect evidence of what they promised in the insurance agreement. Without a policy, proof will be difficult and limited.

According to the provisions of Article 256 of the KUHD, every policy except for life insurance must contain the following special requirements:

- a. Day and date of making the insurance agreement;
- b. Name of the insured, for yourself or for a third party;
- c. A clear description of the insured object;
- d. Amount insured;
- e. The dangers/events borne by the insurer;
- f. When the hazard/event starts and ends, it is the responsibility of the insurer;
- g. Insurance premium;
- h. In general, all conditions that need to be known by the insurer and all special promises made between the parties.

Article 257 of the KUHD stipulates that, although a policy has not been made, insurance has occurred since an agreement was reached between the insured and the insurer. So that the rights and obligations of the insured and the insurer arise since the agreement is based on the memorandum of agreement. If written evidence already exists, then ordinary evidence can be used as regulated in civil procedural law. This provision is referred to by Article 258 paragraph (1) of the KUHD. The special conditions referred to in Article 258 of the KUHD are regarding the essence of the content of the agreement that has been made, especially regarding the realization of the rights and obligations of the insured and the insurer such as: the cause of the loss (event); the nature of the loss to be borne by the insurer; premium payment by the insured; and certain clauses.

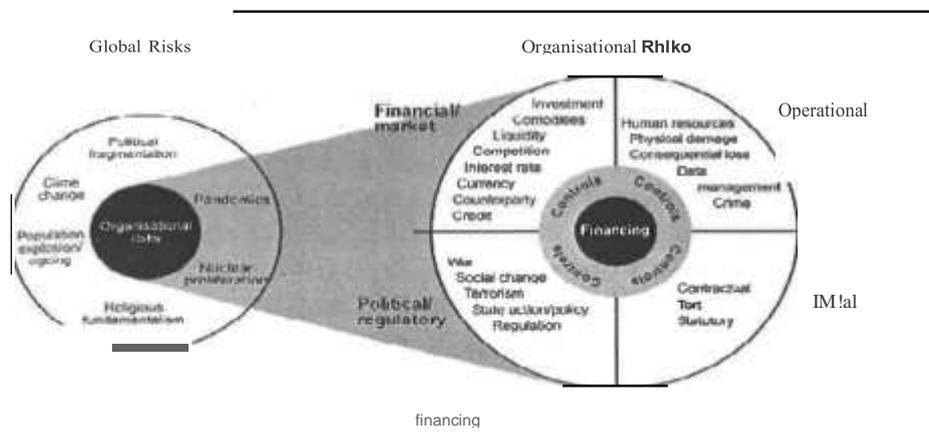
4. Expiration of Insurance

In practice, the insurance agreement will terminate if:

- a. The insurance validity period ends;
- b. Insurance agreements are usually made for a certain period of time, the period of which is specified in the policy. The KUHD does not explicitly stipulate the period of insurance;
- c. the insured trip ends;

- d. This travel based insurance is generally provided for carriage insurance;
- e. A full claim arises (Total Loss); In the policy it is stated that for any event the insurance is held. If at the time the insurance is running there is an event that is covered and causes a loss, the insurer will investigate whether the insured really has an interest in the insured object. If true, then settlement is carried out based on the insured's claim. This compensation payment is fulfilled by the insurer based on the principle of balance. With the fulfillment of compensation based on the insured's claim, the insurance ends;
- f. Insurance stops cancelled;
- g. Insurance can end when the insurance stops. Termination of insurance can take place due to an agreement between the insured and the insurer, can also occur due to factors beyond the will of the insured and the insurer. For example, there is an aggravation of risk after the insurance runs (Articles 293 and 638 of the KUHD);
- h. Insurance fall;
- i. Fall insurance is usually contained in transportation insurance, if the goods are not transported because the ship has not departed or is about to travel but is stopped.

The following is a scheme that describes the various types of Risks and their respective sources:



Sources : H.F. Klornan, 'Rethi nki ng Risk Management', Geneva Papers, July 1992, 11.F. Kloman, Risk Management Report, March 1998.

Marine Hull and Machinery Insurance is a loss insurance, an insurance agreement covering the hull and engines of a vessel. In this case, the Insurer enters into a guarantee agreement with the Insured regarding an object, namely a ship. The parties to the Marine Hull and Machinery insurance agreement are the Insurer, the Insured, the Surveyor and the Loss Adjuster.

The object of Marine Hull and Machinery Coverage can be in the form of: ships and ship engines along with ship engine parts such as: connecting rod, cylinder block, cylinder liner, rocker arm inlet valve. The parties included in Marine Hull and Machinery insurance are:

a. The Insurer is the Insurance Company that accepts the transfer of risk from the Insured.

b. Insured is a party who has an interest in an insured object.

c. Loss Adjuster is a party that provides services in the form of inspection and/or assessment of a claim for compensation/ the insured claims against the insurer based on the terms/conditions contained in the policy and general insurance principles.

d. Surveyor is a party appointed by the Insurer to seek and disclose data (fact finding) from events that cause events or parties who conduct surveys and document what is happening in the field as well as conduct interviews with the Insured in connection with the incident to be submitted to the Loss Adjuster.

e. An insurance agent is someone who works alone or for a business entity, Acting on behalf of an insurance company or Shariah insurance company and fulfilling requirements to market insurance products or Shariah insurance products on behalf of an insurance company or Shariah insurance company.

f. An insurance broker/broker is a person who works for an insurance brokerage firm and fulfills requirements to advise or complete insurance or Shariah insurance and/or claims on behalf of policyholders, insureds or participants.

Marine Hull and Machinery Insurance Policy :

1) *ITC (Institute Time Clause) Hull 1.10.83 Clause 280 (All Risks Comprehensive)*

2) *b. ITC (Institute Time Clause) Hull 1.10.83 Clause 284 (Total Loss, General Average and <sup>3</sup>/<sub>4</sub> Collison Liability, Including Salvage, Salvage Charge and Sue and Labor)*

3) *ITC (Institute Time Clause) Hull 1.10.83 Clause 289 (Total Loss Only, Including Salvage, Salvage Charge and Sue and Labor)*

4) *All Of clausula selalu wajib dilekatkan pakai English Law*

5) *ITC (Institute Time Clause) Hull 1.10.83 Clause 280 (All Risks Comprehensive)*

6) *ITC (Institute Time Clause) Hull 1.10.83 Clause 284 (Total Loss, General Average and Collison Liability, Including Salvage, Salvage Charge and Sue and Labor)*

7) *ITC (Institute Time Clause) Hull 1.10.83 Clause 289 (Total Loss Only, Including Salvage, Salvage Charge and Sue and Labor)*

8) *All clauses must always be attached using English Law*

9) *The risks covered by the Marine Hull and Machinery policy include:*

a) *Marine hazards such as bad weather, drowning, collision, etc. (Perils of The Sea);*

b) *Fire and Explosion;*

c) *Violent theft by persons from outside the ship;*

d) *Discharge into the sea (Jettison);*

e) *Piracy;*

f) *Breakdown or accident in a nuclear installation or reactor on a ship;*

g) *Collision with aircraft or other celestial bodies, ground transportation means, docks and others;*

h) *Earthquakes, volcanic eruptions, lightning strikes;*

i) *Accidents due to loading-unloading cargo or fuel;*

j) *Bursting of boilers on ships, etc.;*

k) *Negligence of the captain, crew or pilot;*

l) *Negligence of repairers or charterers;*

m) *Rebellion or forced takeover by the captain and crew (barraty);*

n) *The actions of the authorities in preventing or reducing the impact of pollution (Pollution hazard);*

o) *Legal liability due to ship collision (Collusion Liability);*

p) *Contribution of General Average and Salvage;*

q) *Rescue costs (Sue and Labor).*

Settlement of claims in Marine Hull and Machinery is the same as general insurance. The rights of the insured that must be fulfilled by the insurer, if it has fulfilled the terms and conditions determined by the insurer and listed in the policy. Payment of claims in Marine Hull and Machinery insurance is the same as in loss insurance, namely:

a. Payment of pure claims, namely payment of claims because the claim has met the specified requirements which are attached with complete supporting documents.

b. Payment of claims exgratia, namely payment of claims or compensation given by the insurer even though the insurer is not obligated to provide compensation. The amount or form of this compensation is not regulated in the policy. In general, this exgratia is given solely because of commercial considerations such as large main customers, influential customers, customers with a good history of claims for compensation (rare).

c. Payment of compromise claims, namely payment of claims whose amount is based on the agreement of the parties concerned because the difference in technical interpretation of the losses incurred.

## RESULTS AND DISCUSSION

### a. Insurer's Liability for Claims in Marine Hull Asuransi Insurance

Marine Hull and Machinery Insurance is a type of insurance that covers the hull and engines of ships. Article 309 of the KUHD defines a ship as all boats, with any name, and of any kind. Unless otherwise specified or agreed otherwise, the ship is considered to include all of its equipment. Article 310 paragraph (1) of the KUHD provides a more detailed definition, namely a ship which is defined as all ships used for shipping at sea or those destined for it. In this study the insurer entered into an insurance agreement with the insured with the object of the agreement was a ship, namely the MV AMAR ship of the general cargo type.

The responsibility of the Insurer (PT Asuransi Purna Artanugraha) A claim in a ship's hull and machinery insurance is to provide protection for the rights of the insured, which are agreed in a deed called a policy when the insurance is closed. Therefore, as long as the policy meets the basic conditions of the agreement, the insurer must be liable for loss, damage or loss of expected profits that may be suffered due to uncertain events in accordance with the agreed policy. and implement the principles in the agreement.

In the closing of the insurance agreement between PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement, it can be seen that the agreement has complied with the provisions of Article 1320 of the KUHPer, namely the agreement of those who bind themselves, the ability to make an agreement or engagement, a certain matter and a lawful cause. This agreement between the insurer and the insured has been fulfilled and is valid, giving rise to legal consequences as regulated in Article 1338 of the Criminal Code, namely that all agreements made legally are valid as law for those who make them and have been set forth in the form of an insurance policy with policy number 00.61. B.0053.12.05. Thus, in accordance with the provisions of Article 1338 of the KUHPer, with the agreement made by PT Asuransi Purna Artanugraha (as the Insurer) and PT Bumi Shipmanagement (as the Insured) in the Insurance Policy No. 00.61.B.0053.12.05, then the policy is a law that applies to both parties. This policy is covered by ITC (Institute Time Clause) Hull 1.10.83 Clause 280 (All Risks/Comprehensive) which stipulates that the loss incurred is a partial loss, so that if there is slight damage to the ship and this damage is caused by the things listed in the policy, the insurer is obliged to make compensation for the losses suffered by the ship.

### b. Claim Settlement In Marine Hull And Machinery Insurance

Marine Hull Insurance and Machinery Policy often causes problems, one example is the case between PT Bumi Shipmanagement and PT Asuransi Purna Artanugraha as the Insurer. This problem arose because the insurance company (PT Asuransi Purna Artanugraha) rejected the ship fire claim submitted by PT Bumi Shipmanagement. Whereas between PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement through a broker PT. Willis Indonesia is bound by an insurance agreement with Marine Hull and Machinery Policy (Policy Number: 00.61.B.0053.12.05) which is valid for a year from December 27, 2005 to December 27, 2006. According to the agreement, the object of coverage is the MV AMAR cargo ship with the sum insured US\$ 8,000,000,000.

After signing the insurance policy, the MV AMAR Ship sailed from Kandla (India) to Fancheng (China) with a full load of seed extract (oil rapeseed oil) on August 4, 2006. On August

13, 2006 at 23:00 when he arrived in the vicinity of the Nicobar Islands, the ship experienced fire in the ship's engine room on engine number 3. Even though it has been extinguished, the fire continues to burn with thick smoke when the emergency room is opened.

Through electronic mail (e-mail) dated August 16, 2006, PT Asuransi Purna Artanugraha received a claim report from the Insured Broker for a fire loss incident that occurred at the location of the MV AMAR Engine Room which burned the exhaust manifold while traveling on August 13, 2006 from Kandla India to China with a full load of seed extract (radish oil). On the same day, August 16, 2006 PT Asuransi Purna Artanugraha informed Broker PT Willis Indonesia that ASPAN had appointed:

- a. Surveyor : PT Asuka Bahari Nusantara to conduct survey & claim investigation.
- b. Loss Adjuster : PT Radita Hutama Internusa to make claim adjustment.
- c. International Maritime Lawyers : Singapore Ince & Co. to provide advice/response regarding the investigation of the cause of the fire incident and the handling of Salvage/Residual Value.

Upon the appointment of the Surveyor and Adjuster, the Insured Broker (PT Willis Indonesia) commented that in the Policy Conditions it is stated that It is also hereby agreed that the Assured shall have the right to appoint the Salvage Society Singapore Office to act on behalf of the Underwriters for any hull and machinery loss or accident that occurs on non-working days or when the Underwriters may be absent. Considering these conditions, the Insured (PT Bumi Shipmanagement) has appointed:

- a. Loss Adjuster : PT Poseidon Adjuster for the investigation process of General Average and Hull Particular Average claims.
- b. Surveyor : Salvage Association
- c. Lawyer : Watson, Farley & Williams to provide advice/response regarding the handling of Salvage/Residual Value.

Through Letter No. 03/KLM-MH/013/VIII/06 dated August 24, 2006, PT Asuransi Purna Artanugraha sent a letter to the Insured so that they can cooperate to continue using the Surveyor PT. Asuka Bahari Nusantara and

International Maritime Lawyers Singapore Ince & Co to continue handling this claim. Through Letter 698/BUMI/GEN/145 dated August 30, 2006, the Insured objected to the appointment of Surveyor & Average Adjuster from PT Asuransi Purna Artanugraha and continued to appoint Poseidon as Surveyor and Average Adjuster taking into account the condition of the Policy that the Insured was entitled to appoint Surveyor & Average Adjuster during the event. losses occur on holidays. In addition, Poseidon has conducted preliminary investigations and interviews with the Ship Crew.

Based on information from Asuka Bahari Nusantara, Asuka Bahari Nusantara was not given access by the Insured to perform physical damage checks and fact finding in the field. Issuance of Preliminary Advice dated September 26, 2006 is only based on:

- d. Results of Meetings and Interviews with the Salvage Association, and Minton, Treharbe & Davies (MTD) Pte Ltd Singapore.
- e. Details Photographs taken by Fire Expert Mr. Kent Grant on September 21, 2006.

Due to the limited access to access to the location of the incident, Asuka Bahari Nusantara provided information on an estimated loss of USD 686,140. Meanwhile, the Salvage Association published a final report with an estimated loss of US\$3,700,000, and the Poseidon Adjuster stated the condition of ship damage with a loss of US\$4,000,000 Constructive Total Loss. Based on the final report from the Salvage Association and the Poseidon Adjuster, the Insured filed a claim amounting to US\$4,000,000. However, PT Asuransi Purna Artanugraha rejected the claim on the grounds:

- a. The Insured does not have an Insurable Interest because the actual owner of the ship is Amartrans Singapore.
- b. The ship was not in a seaworthy condition when the loss occurred as evidenced by the report from Minton Treharney, Ince & Co and a certificate from Class ABS (American Bureau of Shipping) dated June 15, 2006 that the class of the ship at the time of Date of Loss (DOL) was in suspended status. (suspended).
- c. PT Asuransi Purna Artanugraha refers to the estimated loss value of Asuka Bahari Nusantara.

d. The insured does not provide complementary claim documents required by PT Asuransi Purna Artanugraha.

In its lawsuit to the Central Jakarta District Court on August 10, 2012, PT Bumi Shipmanagement (as the Plaintiff) argued that PT Asuransi Purna Artanugraha (as the Defendant) was in default of the Marine Hull and Machinery insurance agreement. PT Bumi Shipmanagement as the Plaintiff argues that the ship is in a seaworthy condition and the Plaintiff on behalf of the ship owner, either directly or through his agent or representative, has complied with the agreement with the Defendant where the ship owner has carried out various coordination and followed standard procedures with related parties. , among others with adjusters, surveyors, insurance, port authorities. Based on that fact, PT Bumi Shipmanagement demanded compensation of US\$ 4,000,000. PT Bumi Shipmanagement has also demanded compensation for potential profits lost in 2006-2012 amounting to US\$28,000,000.

PT Bumi Shipmanagement's lawsuit was won at the District Court level up to the Cassation level, so PT Asuransi Purna Artanugraha was then sentenced to pay the Plaintiff a Constructive Total Loss insurance claim of US\$ 3,000,000.00 (three million US dollars) and Increased Value Insured in the amount of US\$ \$ 1,000,000.00 (one million United States dollars) or a total of US \$ 4,000,000.00; and to punish the Defendant to pay a moratorium interest of US\$ 1,440,000.00 (one million four hundred forty thousand USD). The main legal issues here are:

a. Judgment authority

In accordance with the provisions of Article 1338 of the KUHP, with the agreement made by PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement in the Insurance Policy No. 00.61.B.0053.12.05 then the policy is a law that applies to both parties. Whereas the clause in Condition 19 of the Insurance Policy No. 00.61.B.0053.12.05, states: This insurance is subject to English Law, and Practice. Thus, based on the Insurance Policy with No. 00.61.B.0053.12.05, PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement have agreed to use English law and through the British Courts in the event of a dispute, which in this context, the dispute over the filing of an

insurance claim between PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement must submitted as agreed in the Insurance Policy, thus the Central Jakarta District Court is not authorized to examine and adjudicate the Aquo case.

In accordance with the Jurisprudence of the Supreme Court of the Republic of Indonesia in the decision of case no. 1935 K/Pdt/2012 dated January 14, 2013, which in its consideration stated:

"That because the parties to the Insurance Policy, namely the Plaintiff and the Defendant, have agreed to use English law, then according to the agreement, The Central District Court in Jakarta has no power to review and hear the Aquo case, and the plaintiff must bring the case to the English courts".

b. Expiration of filing a lawsuit/lawsuit

Based on the fire incident on the MV AMAR Ship that occurred on August 13, 2006, while the lawsuit was registered at the Registrar's Office of the Central Jakarta District Court on August 10, 2012. In this case, if the Insurance Policy No. 00.61.B.0053.12.05 is subject to the laws in force in Indonesia, then PT Asuransi Purna Artanugraha and PT Bumi Shipmanagement must also comply with the provisions of the Commercial Code (KUHD) as regulated in Article 744 of the KUHD, which states: "With the passage of 5 (five) years, all lawsuits arising from the insurance policy expire"

Thus, referring to Article 744 of the KUHD, the lawsuit filed by PT Bumi Shipmanagement at the Central Jakarta District Court registered in case No.359/Pdt.G/2012/PN.JKT.PST has expired because the lawsuit/lawsuit was filed after 5 (five) years have passed since the accident occurred on August 13, 2006, so that the right to sue/legally from PT Bumi Shipmanagement has been canceled based on the article.

Regarding the legal case faced by PT Asuransi Purna Artanugraha, there are almost similar legal cases with different judges' decisions. In this legal case, the litigants are PT Pelayaran Manalagi and PT Asuransi Harta Aman Pratama Tbk. This problem arose between PT Pelayaran Manalagi and PT Asuransi Harta Aman Pratama, Tbk because the insurance company rejected the ship fire claim submitted by PT

Pelayaran Manalagi. In fact, the Surabaya-based company is bound by a Marine Hull and Machinery insurance agreement which is valid for a year starting October 31, 2005. PT Pelayaran Manalagi then demanded compensation of US\$843,200. The value was obtained from the reduced claim value of US\$ 1.2 million minus the cost of selling the wrecks worth US\$ 356,800. The insured party also demanded compensation for the potential lost profits in 2007-2009 amounting to US\$14.396 million. PT Pelayaran Manalagi's lawsuit was won at the District Court and Appeals level, so the company

## CONCLUSION

The consideration of the Panel of Judges who rejected PT Asuransi Purna Artanugraha's exception regarding the authority to adjudicate the Central Jakarta District Court in the a quo case proved that there was a judge's error or a clear error in the decision of case no. 1815 K/Pdt/2015 jo No. 306/PDT/2014/PT.DKI in conjunction with No.359/Pdt.G/2012/PN.JKT.PST. because in another case, the Penangung won in the case. So that in order to obtain Consumer Legal Protection and the Insurance Industry to run properly, there should be updates as follows The Marine Hull Insurance Policy includes a clause, although the Insurance Policy agreement includes an English Law clause, it is also stated that it can be tried in Indonesia, so that our law does not become multi-interpreted and unfair which can harm consumers and industry players. The role of OJK is very much needed to re-examine product approvals, especially on the Marine Hull Insurance Policy, so that in order to be fair in the settlement of claims, it is confirmed and written on the Insurance policy as The Insurance Policy includes International and national Arbitration Clauses, which are required to be taken first before going to court, because dispute resolution through Arbitration: will be more fair and transparent, shorter time, there are experts who are experts in their fields who will be appointed by the Petitioner and the Respondent. The benefit of research as a Novelty is that the role of OJK is very much needed as a Regulator to immediately revise Marine Hull (Shipment) Insurance Products by including mandatory Clauses on the Insurance Policy (Contract Agreement in the event of a

claim dispute, the first is required for dispute resolution through Arbitration (International or National) written to be a nominated arbitrator, and in collaboration with the relevant ministries, so that due to dispute resolution through Arbitration: it will be more fair and transparent, shorter time, there will be experts who are experts in their fields who will be appointed by the Petitioner and the respondent and the dispute becomes confidential because the trial is held in private.

## Suggestion:

- a. It is necessary to understand the contents of the policy for the Insured/consumer in detail, so that the Insured understands their rights and obligations.
- b. It is necessary to understand the contents of the Marine Hull and Machinery Insurance Policy for judges to be able to judge the case of Marine Hull and Machinery Insurance fairly and wisely.
- c. The role of OJK is mandatory as a regulator, so that legal certainty, legal benefits can be fair. In Indonesia, this is a milestone in helping foreign investors to invest their capital in order to help develop the Indonesian economy.

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