
Insurance Agent's Liability in Actions of Churning on Insurance Contracts

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Abstract

The Indonesian Life Insurance Association and PT. Prudential Life Assurance prevent churning, which harms insureds' benefits. This study examines the legal consequences for an insurance agent who churns and the agent's culpability for illegal behavior. Using a sociological normative research method, the researcher conducted legal research by interviewing relevant sources and doing a literature review. Based on the study's results, insurance agents are responsible for compensating insureds for churning losses, typically in the form of material losses in the form of money from premiums purchased for new policies or from premiums during the active period of the old policy prior to purchasing a new policy. Acts against the law (churning) by insurance agents result in revocation of agency certification and inclusion in the List of Troubled Agents according to the Indonesian Life Insurance Association as regulated in Chapter III Article 3 letter e Decree RAT AAJI No. 03/AAJI/2012 regarding agency code of ethics standards and not receiving commissions, awards, and positions given by the company.

Keyword: Churning, Insurance Agent's, Insurance Law, Insurance Policy

Abstrak

Perbuatan churning adalah perbuatan yang merugikan tertanggung dari segi penerimaan manfaat dan perbuatan tersebut dilarang oleh Asosiasi Asuransi Jiwa Indonesia maupun perusahaan asuransi seperti PT. Prudential Life Assurance. Penelitian ini bertujuan untuk mengetahui akibat hukum jika agen asuransi melakukan perbuatan melawan hukum (churning) dan bentuk tanggung jawab dari agen asuransi terhadap perbuatan melawan hukum di dalam asuransi. Adapun metode yang digunakan oleh penulis dalam penelitian ini adalah metode penelitian normatif. Berdasarkan hasil penelitian diperoleh kesimpulan bahwa, tanggung jawab agen asuransi terhadap churning adalah memberikan kerugian yang diterima oleh tertanggung biasanya berbentuk kerugian materiil berupa uang dari premi yang dibeli untuk polis baru atau dari premi selama masa aktif dari polis lama sebelum membeli polis baru, dan agen asuransi wajib mengganti kerugian berupa uang kepada tertanggung sesuai dengan nilai premi yang dibayarkan. Perbuatan melawan hukum (churning) yang dilakukan agen asuransi mendapatkan suatu akibat hukum berupa sanksi pencabutan sertifikasi keagenan dan dimasukkan ke dalam Daftar Agen Bermasalah menurut Asosiasi Asuransi Jiwa Indonesia sebagaimana diatur pada Bab III Pasal 3 huruf e Keputusan RAT AAJI No. 03/AAJI/2012 tentang standar kode etik keagenan serta tidak mendapatkan komisi, penghargaan dan jabatan yang diberikan perusahaan sesuai

ketentuan Lampiran III poin VII dari perjanjian keganenan pada perusahaan PT.Prudential Life Assurance.

Kata kunci - Agen Asuransi, Churning, Hukum Asuransi, Pernjanjian Asuransi.

INTRODUCTION

People think that insurance is a very important part of making people's lives better because it keeps the economy stable even when there is social unrest. Funds that are collected every month or year in the form of premiums are very useful because they can be used as capital by the insured, the government, and business owners to grow their businesses. All parts of society can benefit from the money made from insurance premiums (Prakoso, 2004:317).

Especially in the current era of the COVID-19 epidemic, it has a significant impact on the life and health of every person on earth. This illness poses a significant threat to global health. (Zaid et al, 2021:92).

Ketut Sendra says that insurance agents can tell us how insurance companies have grown. This means there will be no insurance policy if there is no agent. A person who sells insurance products directly is also called an insurance agent. The agent represents the insurance company when deciding whether or not to sell insurance to a potential insured or participant (Sandra, 2004:118).

Insurance agents are the middlemen between the insurance company and the insured. They are very important for both getting coverage and getting claims paid (Lastina, 2016:1). Law of The Republic of Indonesia Number 40 Year 2014 on Insurance about Insurance says that insurance agents work for insurance companies as their representatives, which is the same thing as marketing. Chapter 1 Number 1 Letter B of Decree of RAT AAJI No. 03/AAJI/2012 on Standard Code of Ethics for Insurance Agents gives another explanation of how insurance agents are regulated. It says that a person or legal entity whose job is to market life insurance products for and on behalf of the insurance company for which the insurance agent works according to the agency agreement of each insurance company (Muis, 1996:15).

According to Article 5 letter I of Decree RAT AAJI No. 03/AAJI/2012 on the Standard Code of Ethics for Insurance Agents, insurance agents are also required to market insurance products for and on behalf of the company. But with the number of insurance agents there are now, there will be gaps between agents and insurance companies in the future. This will be caused, among other things, by the existence of several gaps that are seen as insufficient and not properly implemented when it comes to agents' duties and responsibilities as partners in companies that sell products insurance products (Tung, 2019:1040).

For example, if the agent is late sending the first premium to the insurance company, the customer has to wait longer to get an insurance policy. The agent should send the first premium to the insurance company for approval, then send the policy to the client and ask for proof that the client received the policy (Setiawan, Susetyo, and Saptono, 2013:1).

At the moment, there are a lot of actions that cause losses in the form of loss or reduce the benefits of insurance products. However, losses won't happen if the agent doesn't do things that aren't allowed by the principal or the basics of the agency agreement. Article 1 paragraph (28) of Law Number 40 of 2014 about insurance says, "Marketers are responsible for marketing insurance company products and serving customers or the insured if an insurance agreement has been made." So, the number of problems that insurance agents cause can make the customer or insured person less likely to trust the insurance company (Asufie, Qamariyanti, and Usman, 2020:166).

Currently, the problem with insurance agents is that the insurance agent's comprehension of the agency agreement and the standard of the insurance agent's code of ethics is deemed to be inadequate in terms of understanding the insurance agent's duties, obligations, and responsibilities. Currently, insurance agents

must abide by the agency agreement laws and mandatory code of ethics standards.

If the insurance agent violates the obligations and responsibilities in the attachment of chapter II Article 1-5 regarding the Obligations of Marketers, RAT AAJI Decree No.03/AAJI-2012, namely obligations to applicable regulations, agency agreements, professions, insurance companies, and the insured, as well as arrangements regarding obligations contained in Article 3 of the PT. Prudential Life Assurance Agency Agreement, which explains the obligations, the insurance agent will be subject to disciplinary action.

The regulations covering obligations and responsibilities make reference to Paragraphs 27 and 28 of Law No. 40 of 2014 regarding Insurance, as those two articles outline the obligations of insurance agents in general. Therefore, it can be claimed that a violation committed by an insurance agent is referred to as a criminal conduct, as it results in a loss for both the insurance company and the insured.

A small proportion of the actions of insurance brokers who make mistakes involving the insured involve churning 03/AAJI/2012 regarding Standard Code of Ethics for Insurance Agents is "the act of persuading and influencing policyholders to change the specifications of existing policies or replace existing policies with new policies at the same Life Insurance Company, and/or purchase new policies using funds originating from an active policy from the same Life Insurance Company, without prior explanation to the policyholder regarding the losses that the policyholder may suffer as a result of such a change." Article 5 letter b of RAT AAJI Decree No. 03/AAJI/2012 concerning Standards of code of ethics for insurance agents plainly prohibits insurance agents from engaging in churning in this instance. Therefore, the insurance agent has committed an illegal act (PMH) that has resulted in a loss for the insured.

If the insurance agent engages in churning, it will have an effect on the insured's loss, as this procedure reduces the cash value of an existing or active policy, and it can also result in the insurance policy's lack of benefits, which leads to the opening of a new policyTung, Loc.Cit.. In certain instances, this procedure will render the

existing policy null and void. When the policy has no cash value, there are no further funds (Cash Value) to pay for a new policy, hence the new policy is lost. This procedure ultimately leads in the insured leaving little or no money to their heirs (Čavoški, 2019:112).

In this case, the regulation governing churning is contained in the decision of RAT AAJI No. 03/AAJI/2012 regarding the standard code of ethics for insurance agents and in agency agreements, but the prohibition of churning is not included in Law No. 40 of 2014 concerning Insurers. Therefore, the regulations contained in the agency agreement and the RAT AAJI Decree pertaining to the standard code of ethics for insurance agents can assist in implementing the punishments against the insurance agent stipulated by the regulations.

In this instance, the insurance agent's responsibility is deemed to be very important, as the insurance agent's duties include not only describing insurance products and providing services to customers, but also being prepared to compensate for losses caused by the insurance agent's actions in violation of the agency agreement and applicable law. This study intends to identify, assess, and characterize the culpability of insurance agents who engage in churning against an insurance agreement using this basic description.

METHODS

The method is a technique employed by researchers to achieve a particular objective. Therefore, in this section, the research methodologies and methodology will be explained. The process of implementation comprises the type of study, research methodology, data sources, and data analysis techniques. Using the scientific method, research is conducted to examine the veracity of a body of knowledge. This sort of sociological normative research, which is a method or approach used to solve problems based on normative legal science, does not study the norm system in the legislation, but rather observes the reactions and interactions that occur when the norm system functions in society (Nur Dewata and Achmad, 2017:47).

It will be normative sociological legal research that will be conducted. This research was undertaken by undertaking direct field research as the major legal material, with help from secondary and tertiary data. The author also obtains legal materials from insurance-related websites, such as the website of PT. Prudential Life Insurance in Pekanbaru, as well as through an interview with Mr. Hartono, an Insurance Expert, Practitioner, and Owner of the Group Agency (GA) Office of PT. Prudential Life Assurance. In assessing the collected data, the authors employ both prescriptive and qualitative analysis (Abdul Kadir, 2004:50) primarily research conducted by soliciting solutions to specific problems. Legal material is used as a guide to concentrate research in accordance with analytical methods that provide an evaluation of the object under study, namely whether insurance agents are liable for churning actions against insurance contracts and the legal consequences if they commit illegal acts in insurance contracts.

RESULTS AND DISCUSSION

Legal Relationships and Qualifications of Insurance Agents

Essentially, insurance businesses employ insurance agents who meet both insurance company and AAJI certification standards; insurance agents are supposed to perform their duties professionally (Pradana, 2020:52). Before becoming an insurance agent, the insurance company and the prospective agent typically enter into an agreement, known as an agency agreement.

In order to carry out an agreement, there must be a legal relationship between the parties based on their rights and responsibilities; each party has a legal relationship, particularly the insurance agent as the insurance company's representative (Budiono et al, 2020:48). If an insurance contract has been negotiated, the insurance agent must be involved. Insurance agents' responsibilities consist of providing services to the insured and assisting the insured in settling insurance claims. Dalam sebuah kontrak tersebut maka haruslah mengandung itikad baik dari para pihak. Article 1338, subsection 3 of the Civil Code (KUH Perdata) specifies that a contract must be executed in good faith.

According to Aditya Fadli Turangan, good faith centers on the legal fulfillment of an agreement (Turangan, 2019:47).

Therefore, the insurance agent has a legal relationship with the insured as a representative of the insurance company. If an insurance contract is signed between the insurance company and the insured, legal relationships can be established. Following is an explanation of the legal relationship between the insurance agent and the insurance company, as well as the legal relationship between the insurance agent and the insured.

(1). Legal status of the Insurance Agent and Company. The Legal Relationship between the Insurance Agent and the Insurance Company is a contractual one. The contractual relationship is established by the insurance company's agency agreement with the agent. Typically, the contents of the Agency Agreement are agreements that control and lead insurance agents to carry out the responsibilities and obligations outlined in the code of ethics and must be adhered to by insurance agents. PT. Prudential Life Assurance is an example of an agency agreement. An agency agreement is essentially a power of attorney arrangement, in which one party receives the ability to bind another party through his actions (Setiawan et al, 2013).

(2). Relationship between the insurance agent and the insured from a legal standpoint. The insurance agent and the insured have almost no contractual relationship. With this situation, the agent acts on behalf of the company, marketing and selling insurance goods to the insured and assisting the insured in closing the insurance policy. According to Hartono, the insurance agent does not have a direct legal relationship with the insured, but as the company's representative, the insurance agent actively assists and serves the insured (Hartono, 2020). Article 3.2.4 of the PT. Prudential Life Assurance Agency Agreement stipulates, "Performing and completing tasks, obligations, matters, and functions periodically allocated by the firm to agents."

Insurance companies and insurance agents are classified as insurers, where insurance companies offer the public insurance products and insurance benefits, and where insurance

agents serve as company representatives in the field by disseminating knowledge about insurance and by representing insurance companies in carrying out their responsibilities and obligations (Buchmueller and Levy, 2020:400).

The obligations of insurance agents are governed by the rules and regulations outlined in Article 31 of Law No. 40 of 2014 on Insurance, which addresses the obligations of insurance agents to insurance companies and the insured. According to Article 31 paragraphs 1 and 2 of Law No. 40 of 2014 concerning Insurance regarding the obligations of insurance agents, specifically "insurance agents are required to apply all expertise, attention, and accuracy in serving or transacting with policyholders, the insured, or participants; Insurance agents are required to provide correct and non-misleading information to policyholders, the insured, or participants regarding the risks, benefits, obligations, and charge."

The author can determine that insurance agents are required to adhere to the directives and instructions provided by the mandate of the law in order to carry out their responsibilities in accordance with the terms of the Insurance laws. Therefore, Article 31 paragraph (1) of the Law on Insurance explains that insurance agents are required to have skills or abilities and serve the insured in order to assist the insured in carrying out the insurance agreement stated in the contract, whereas Article 31 paragraph (2) of the Law on Insurance explains that agents are required to provide correct and not misleading information so that the insured receives an appropriate insurance benefit. Therefore, if the requirement is not met, the insurance agent is negligent and in violation of the specified obligations.

When the insurance agent and insurance company enter into an agency agreement that is binding on both parties, the insurance agent as a party to the contractual relationship must comply with the agency agreement as outlined in Article 3 of the agency agreement of PT. Prudential Life Assurance regarding Obligations and Responsibilities. Additional regulations can be found in CHAPTER II of RAT AAJI's decision No.03/AAJI-2012 regarding the obligations of market participants. According to the PT. Prudential Life Assurance Agency

Agreement, insurance agents have the following responsibilities:

- (1). The Agents must perform services competently and effectively.
- (2). The Agents must adhere to all guidelines and procedures established by the organization based on their performance.
- (3). The Agents must comply with agency rules, AAJI standards, and company-mandated training, product socialization, and compliance programs.
- (4). The Agents must comply with all applicable laws and regulations.

In general, there is no legal relationship between the insurance agent and the insured, as the insurance agent is not named as the insurer in the insurance contract, but rather as a representative of the insurer. The insurance agent only provides services, explains insurance products, and assists in settling the insured's claim. However, Chapter II Article 5 of Decree of RAT AAJI No. 3/AAJI/2012 imposes the following obligations on insurance agents toward the insured:

- (1). The Agent doesn't engage in a twisting act.
- (2). The agent doesn't engage in churning behavior.
- (3). The Agents are required to explain all insurance products correctly and thoroughly.
- (4). The Agents are obligated to offer the insured with superior service in a professional manner.
- (5). The Agents are obligated to assist with claims settlement and insurance coverage.

Insurance agents are obligated to fulfill their duties to the insured because they have high integrity when promoting products and providing service to the insured. According to Article 28 paragraphs 2 and 4 of Law Number 40 of 2014 pertaining to Insurance, "an insurance agent may only receive premiums or contributions from policyholders or participants after obtaining approval from the insurance company or sharia insurance company; and insurance agents may not withhold or manage premiums or contributions." In this instance, in addition to complying with insurance laws and regulations, the insurance agent is expected to adhere to additional requirements pertaining to the duties of insurance agents.

If the insurance agent fails to fulfill his or her responsibilities to the insured, the agent bears liability. Essentially, the insurance agent's primary role is to deliver services to the insured or to educate the community about insurance

(O'Connor, 2018:3–4), however, there are some universal agent responsibilities, including: (1). Treat clients or insureds with fairness, transparency, and honesty. (2). Provide exceptional service. (3). Placing the interests of potential agents of the Customer or the insured ahead of the agent's own interests. (4). Treat all Customers and Potential Customers with courtesy and respect at all times. (5). If the agent is required to request confidential information from the insured, he or she must keep the information confidential and use it solely for the original purpose for which it was asked. (6). Agents are not permitted to sell insurance policies beyond the customer's needs in order to earn additional commissions or personal benefits. (7). Agents are not permitted to charge consumers fees that are inconsistent with company regulations or policies, applicable laws and regulations, and Company Insurance Products.

Due to the insurance agent's link with the insurance company, which is governed by the agency agreement, the insurance agent is responsible to the company. Other insurance agent duties include the following:

(1). The Agents are required to report client complaints as quickly as possible to the company. (2). The Agents are entrusted with a variety of obligations, such as receiving premiums from customers and protecting personal information. (3). The Agents are responsible for working as field underwriters for the company by gathering complete and accurate information on potential customers or the insured regarding potential risks and submitting it to the company in its entirety. (4). The Agents are required to know and comprehend the insurance business goods they sell. (5). The Agents are responsible for obtaining agency certificates and licenses as necessary by applicable insurance sector legislation in order to maintain their professionalism. (6). The Agents are prohibited from marketing the Company's insurance products outside of Indonesia.

Article 8.1 of the PT. Prudential Life Assurance agency agreement regulates additional insurance agent responsibilities, including: (1). The insurance agent may take disciplinary action against insurance agents. (2). The insurance company has the right to suspend insurance

agents. (3). The Agents of insurance offer recompense to the insured.

The author discusses the significance of the position of the insurance agent towards the insured, as the agent is the front-line representative who is aware of the insured's complaints to the insurance company and has a thorough understanding of insurance products. As a result, insurance agents have a responsibility to clients or the insured in order to build confidence and increase their worth as agents (Rios et al, 2019:218–19).

The insurance business PT. Prudential Life Assurance and the Indonesian life insurance organization restrict certain illegal practices, such as twisting and churning, because they might be detrimental to the insurance company and the insured. According to Article 1365 BW, Unlawful Acts (PMH) are "activities that cause injury to others and compel the perpetrator to give restitution for the loss".

It is clear from this explanation that if the insurance agent reports a loss suffered by the insured, the agent is obligated to offer partial or full compensation. There are numerous PMH acts that insurance agents can conduct in the insurance industry, particularly churning behaviors that make the insured or customer dissatisfied with their current insurance policy. In the insurance industry, insurance agents are prohibited from engaging in the practice of churning.

The act of churning is unique to life insurance because in the agreement, each object of the insurance agreement can enter into an agreement with more than one insured object and other insurance companies have the right to offer insurance benefits to the insured who previously had insurance; the arrangement is governed by CHAPTER II Article 5 letter B and Article 1 letter D agency agreement. PT. Prudential Life Assurance.

At the time of signing into a life insurance agreement, the insured receives an insurance policy. If the insured receives the same benefits from the new insurance agreement without being informed of the loss, the insured's acquisition of a new policy falls under the category of churning. In contrast to general insurance, the procurement of an insurance

agreement that becomes the object of insurance can only be one object or goods that are insured, and other insurance companies are not permitted to enter into a general insurance agreement with the insured from an insurance company that has already made an agreement with the insured; therefore, churning is prohibited in the general agent agreement insurance (Boozary et al, 2019:672).

According to Hartono, insurance agents engage in churning because they do not comprehend life insurance products as a whole, consider selling similar insurance products, are unaware of the potential for churning in the insurance policy, and pursue production and commissions without considering the consequences. will be accepted by the agent who is not receiving an award or promotion because of his or her actions(Hartono, 2020). Before selling or marketing insurance products to the public, insurance agents have implemented the good regulations of Law no. 40 of 2014 concerning insurance, the PT. Prudential Life Assurance Agency Agreement, and RAT AAJI Decree 03/AAJI/2012, such as receiving training on prohibited legal actions, both twisting and churning acts, as well as criminal acts such as money laundering and fraud.

Responsibility of Insurance Agents Who Engage in Churning

From the churning action, the insurance agent must have inflicted a loss on the insured by purchasing a new policy with the same benefits without explaining the loss to the insured; consequently, the insured is required to pay the insurance as from new again and is also subject to administrative costs, and acquisitions from the first year, as well as covering the old policy, will eliminate the exceptions that have been skipped and restart from the beginning according to the new policy.

Essentially, a professional agent must explain to the insured if opening a new policy with the same benefits without explaining the consequences of the loss of buying a new policy and closing an old policy in which funds are transferred to a new policy is prohibited for life insurance companies in Indonesia. Moreover, the arrangement is governed by CHAPTER II Article 5 letter an of RAT AAJI Decree No.03/AAJI-2012 concerning the risks of churning.

Because the insured does not understand the act of churning because the insurance agent does not explain the prohibition on churning in insurance, the act of churning is injurious to the insured. The insurance agent is obligated to compensate the insured in cash based on the value of the premium paid(Courtemanche et al, 2019:2).

This provision is governed by Article 9.2 of the PT. Prudential Life Assurance agency agreement, which states that "the agent is obligated to compensate for all losses suffered by the insurance company and the insured," which translates to "the agent is obligated to compensate for the loss caused by negligence, mistakes, and violations committed by the insurance agent, whether done intentionally or unintentionally."

According to (Hartono, 202) the form of compensation made by insurance agents to the insured is money from premiums that the insured has used to pay for a new policy. Typically, the insured asks for a loss of money from the premium when purchasing a new insurance policy or asks for money from premiums on the old policy for the duration of the old policy's validity. Therefore, the premium paid while purchasing a new insurance serves as a benchmark for the insured's loss compensation.

The case of churning was discovered in the city of Pekanbaru, where an insurance agent named DS sold BA Prudential insurance products. BA received a death benefit with a Sum Assured of IDR 684,000,000 and monthly premiums of IDR 2,500,000. Previously BA had a Prudential insurance policy with the same benefits, namely a death benefit of IDR. 163,000,000, with a premium of IDR. 600,000, each month. Previously DS had sold BA insurance products with the same benefits.

BA recognizes that it has two policies with identical benefits; consequently, BA spoke with Prudential regarding the provisions. According to the information gathered by BA, there are dishonest insurance agents that offer insurance packages on behalf of the same insured and the same benefits again with a monthly payment period. Therefore, BA requested a loss payment in the sum of IDR 2.5 million. Whereas, upon request, the insurance company may increase the benefits of the policy owned by BA in

accordance with the provisions of Article 28 of the insurance agreement of PT. Prudential Life Assurance pertaining to changes in policy transactions in the form of an increase in the amount of premium money, the sum insured, and the addition or subtraction of additional insureds.

Article 3.6.3 of the PT. Prudential Life Assurance agency agreement stipulates that insurance agents are obligated to provide accurate and non-misleading information about insurance policies. This requirement is applicable to the obligation of insurance agents to provide correct and non-misleading information. BA has the right to sue DS for losses since DS did not explain the churning action on the life insurance policy and the insurance agent called DS committed a forbidden act by the life insurance company by taking BA's rights in exchange for a commission. Article 5 letter an of RAT AAJI Decree No.03/AAJI/2012 governs the prohibition of churning and any variants thereof in this instance.

Then BA has the right to request monetary compensation from DS in the amount of IDR. 2,500,000, since DS engaged in churning. So, under the terms of Article 9 of the PT. Prudential Life Assurance Agency Agreement, DS is obligated to deliver losses under the specified conditions and may not decline BA's request for losses. So, in accordance with the provisions of CHAPTER III Article 3 of RAT AAJI Decree No.03/AAJI/2012, the insurance agent named DS receives a sanction in the form of revocation of the agency certificate and inclusion in the list of problematic agents, where the insurance agent can no longer directly sell insurance products.

CONCLUSION

It can be concluded that the insurance agent's responsibility for churning is to compensate the insured for material loss in the form of money from the premium purchased for the new policy or from the premium during the active period of the old policy before purchasing a new policy, and the insurance agent is required to compensate the loss in cash. Essentially, the loss incurred by the insured is determined by the

terms of the premium amount paid to the insurance company. Articles 27 and 28 of Law Number 40 of 2014 concerning Insurance and also Articles 16-18 of Financial Services Authority Regulation (POJK) Number 69/POJK.05/2016 regarding the Business Conduct of Insurance Companies, Sharia Insurance Companies, and Sharia Reinsurance Companies do not explain the responsibility of insurance agents for churning in detail; however, the two regulations describe the responsibilities in broad terms.

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