



## Implementation of Machinery Breakdown Insurance at PT Semen Indonesia

Dwi Tatak Subagiyo<sup>1</sup>, Ahmad Setiawan<sup>2</sup>, Indah Herlina<sup>3</sup>

<sup>1</sup> Faculty of Law, Wijaya Kusuma Surabaya University

<sup>2,3</sup> Student Magister of Law, Faculty of Law, Wijaya Kusuma Surabaya University

**ABSTRACT:** This research relating to insurance for operational machines at PT Semen Indonesia raises problems, namely: What is the object of implementing Machinery Breakdown Insurance in practice at PT. Semen Indonesia, and how to settle claims contained in insurance at PT. Indonesian Cement. The research results stated that, In this case the object insured by PT. Semen Indonesia to PT. Jasindo is all damage and/or that is sudden and unexpected and is not excluded in the policy or the machines insured. Compensation guarantee in Machinery Breakdown Insurance between PT. Semen Indonesia with PT. Jasindo if a loss occurs, what PT Jasindo will pay to PT Semen Indonesia is based on the damage. In the event of an insurance claim for machine damage, PT Semen Indonesia must immediately notify PT Jasindo about the loss/damage within 7 (seven) calendar days and must assist PT Jasindo in conducting a survey to calculate the compensation that will be given. PT Jasindo's responsibility is to compensate for losses due to the asset's condition becoming its original condition, without taking into account profit or loss. In this case, PT Jasindo is responsible within 3 x 24 hours and beyond that time PT Jasindo is no longer responsible. If there is a dispute regarding Machine Damage Insurance between PT Semen Indonesia and PT Jasindo in terms of claims, then PT Semen Indonesia and PT Jasindo agree to take legal action, namely through arbitration or through the local District Court.

**KEYWORDS:** cement, insurance, production machines.

### INTRODUCTION

The progress of science, especially regarding technology, is very rapid. The results of technological progress in Indonesia have a positive influence on aspects of human life. Technological progress has a very important role in development efforts in the fields of communications, industry, service construction, and even in the field of domestic life. It turns out that the influence of technology also has an influence in the field of insurance. Technological advances that bring positive change and provide goodness for human life still contain risks. The risk of using or utilizing tools resulting from modern technology cannot be said to be small.

The more technology improves, the results of its types increase and at the same time there are more and more types of risks that arise or are known in human life, which everyone has an interest in not carrying themselves. As new risks emerge, new interests also arise which need to be sought to protect or provide guarantees, in the sense that these new interests require coverage. This means that people or companies who face new risks hope that if at some point the risk really turns into a reality, namely a loss, then they will not be alone in carrying the loss, in fact they hope that there will be other parties who will compensate for the loss. For this reason, they need coverage for these new risks.

Coverage for these new interests is already known in practice. Many of them are classified into one particular class of coverage called Varia Coverage.

So this risk cannot be included in the risks that are recognized in the Commercial Code, hereinafter referred to as the Commercial Code, because progress or developments in insurance life in Indonesia are not balanced with the formation of regulations that can accommodate all these developments. One form of new coverage that is classified as Varia Coverage is Engineering insurance.<sup>1</sup> Engineering Insurance covers modern technology, industrial businesses, and service delivery businesses. And in the Engineering Insurance classification there is Machinery Breakdown Insurance, hereinafter written as MBI, namely coverage that provides guarantees to the insured against losses caused by unexpected damage to machines and their mechanical equipment or losses to

<sup>1</sup> Emmy Pangaribuan Simanjutak, *Hukum pertanggung jawaban dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 1990, h. 93.



machines that are running or stationary as a result. from accidents both from outside and from within the machine itself. In developed countries such as Europe and America, this form of insurance has long developed in line with industrial progress in that country.<sup>2</sup> In Indonesia, this type of coverage is still relatively new and has not been specifically regulated in the Commercial Code.

The emergence of these new types of coverage does not conflict with the KUHD. This can be seen in article 247 of the KUHD. This article does not legally limit or prevent the emergence of other types of coverage according to community needs. The nature of article 247 of the Criminal Code only mentions a few examples or the nature of the article is enumerative, not limitative.<sup>3</sup>

In addition to this article, it is also possible for the emergence of new forms of insurance based on article 268 of the Criminal Code which states that all interests can in principle become the subject of insurance as long as they meet the following conditions:

- Can be valued in money
- Threatened by a danger
- Not excluded by law<sup>4</sup>

Based on the description above, parties operating in fields related to modern technology, for example; industrial businesses and providing services, so that the business can run smoothly, it is recommended to insure the business under Machinery Breakdown Insurance, because of dangers or disasters at any time even though the business sector has been managed with modern technology. Since this form of Machinery Breakdown Insurance is a new insurance practice and has not been specifically regulated in the Commercial Code, we need to study Machinery Breakdown Insurance, by trying to conduct research to find its implementation which will be discussed further, regarding several issues related to the implementation of Machinery Breakdown Insurance in practice at PT. Semen Indonesia, namely: What is the object of implementing Machinery Breakdown Insurance in practice at PT. Semen Indonesia, and how to settle claims contained in insurance at PT. Indonesian Cement.

## LITERATURE REVIEW

### A. Definition of Insurance

"Verzekering" (Dutch) is also called insurance or also means coverage<sup>5</sup>, in English it is called Insurance. The definition of coverage or insurance according to Article 246 of the Criminal Code is as follows:

"Insurance or coverage is an agreement, where the insurer, by enjoying a premium, binds himself to the Insured to free him from losses due to loss, damage or lack of expected profits, which he will suffer due to an unspecified event."

Then Law Number 2 of 1992 concerning Insurance Business in article 1 point 1 also explains the meaning of insurance as follows:

"Insurance or Coverage is an agreement between two or more parties, whereby the insurer binds itself to the insured, by receiving insurance premiums, to provide compensation to the insured for loss, damage or loss of expected profits, or legal liability to third parties that may will be suffered by the insured, arising from an uncertain event, or to provide a payment based on the death or life of an insured person."

This definition can be concluded that the insurance agreement contains several elements as follows:<sup>6</sup>

1. There are parties
2. Transfer of risk from the insured to the insurer
3. Premium
4. Uncertain events
5. Compensate for losses

Ad. 1. There are parties.

There are parties, namely the insurer and the insured, so it is a reciprocal agreement, therefore there needs to be an agreement between the insurer and the insured regarding the objects insured and regarding the conditions that apply to the

<sup>2</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 3.

<sup>3</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggungan dan Perkembangannya*, 1990, h. 36.

<sup>4</sup> *Ibid.*

<sup>5</sup> Djoko Prakoso, *Hukum Asuransi Indonesia*, Cetakan Kelima, Rineka Cipta, Jakarta, 2004, h. 1.

<sup>6</sup> Abdul Kadir Muhammad, *Pokok-pokok Hukum Pertanggungan*, Alumni, Bandung, 1990, h. 28.



insurance. If there is no notification according to article 251 of the Criminal Code, it is considered that there is no word agreed, so it is also considered that there is no coverage.

Ad. 2. Transfer of risk from the insured to the insurer.

This occurs because the insured is unable to face risks that threaten his life or property, so by transferring the risk to the insurance institution, the insured will receive compensation for losses from the insurer if the event for which he is insured actually occurs.

Ad. 3. Premium.

The insurer will only accept the transfer of risk from the insured by enjoying the premium in return, so that the coverage will not run if the insured does not fulfill the obligation, namely paying the premium.

Ad. 4. Uncertain event (evenement).

An insured person demands compensation for losses from the insurer, then he receives compensation for losses, if the loss suffered is caused by an event that is not specified for which the insured is insured. This means that the event cannot be known in advance and cannot be expected to occur.

Ad. 5. Compensate for losses.

In principle, insurance is a loss agreement, so that if an event that is not specified for which is insured actually occurs, the insurer is obliged to pay compensation for the loss. This compensation must be balanced with the loss actually suffered by the insured.<sup>7</sup>

The insurance agreement is a reciprocal agreement, because both parties bind themselves to something, namely the insurer binds itself to compensate for losses suffered by the insured and the insured commits itself to pay the premium. The amount of the premium is balanced with the risk borne by the insurer.<sup>8</sup>

According to article 1774 of the Civil Code, hereinafter referred to as the Civil Code, insurance agreements include contingency agreements (kansovereenkomst), namely agreements that contain the element of "possibility", because the obligation of the insurer to compensate for losses suffered by the insured depends on the presence or absence of events. indeterminate (onzeker vooraf). If an uncertain event occurs, the insured suffers a loss and the result is that the insurer must compensate the insured for the loss. If the uncertain event does not exist, then the insurer does not need to reimburse anything. The inclusion of insurance agreements in the gambling and betting group (article 1774 of the Civil Code) according to H.M.N. Purwosutjipto is incorrect. There are striking differences between the two groups of agreements, namely:

- a. In insurance, the relationship between the possibility of profit and loss and an uncertain event can still be calculated or estimated, meaning that if the possibility of an uncertain event occurring is close or the possibility of loss/damage is not far away, then the insurer can refuse coverage or increase the premium, for example in coverage of a house against fire hazards. If the insured house is surrounded by flammable huts or bedsits or there is a munitions building near the house, then the possibility of the house catching fire is close. In this case the insurer can refuse the coverage or increase the premium amount.
- b. In gambling or betting, the relationship between the possibility of profit and loss and uncertain events cannot be calculated or predicted in advance. The existence of profits and losses completely depends on the fate of the person who gambles or bets.

From the description above, where the legislators include insurance agreements at the same level as betting and gambling, it is not appropriate. It would be better if the insurance agreement were excluded from the group of possible agreements and given a separate place in the Commercial Code. This has happened with the placement of Chapters IX and X in Book I and Chapters IX and So, now all you have to do is cross out the insurance agreement from Article 1774 of the Civil Code.<sup>9</sup>

## B.1. Classification of Coverage

The existence of various kinds of coverage can be classified as follows<sup>10</sup>:

1. Classification of coverage according to science.

<sup>7</sup> *Ibid.*, h. 29.

<sup>8</sup> H.M.N Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 1.

<sup>9</sup> *Ibid.*, h. 2.

<sup>10</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggungjawaban dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum Universitas Gajah Mada, Yogyakarta, 1990, h. 32.



2. Classification of coverage according to practice.

The classification is as follows:

**1. Viewed from a scientific perspective, insurance can be classified into:**

- Loss coverage
- Coverage for a certain amount of money

The way to distinguish whether coverage includes loss coverage or coverage for a sum of money is that if in the insurance agreement the Insurer binds himself to perform a performance in the form of providing a predetermined amount of money, then we are dealing with coverage for a sum of money. On the other hand, if in the insurance agreement, the Insurer binds himself to carry out performance in the form of compensating for losses as long as there is a loss that arises, then we are dealing with loss coverage.<sup>11</sup>

According to the KUHD as stated in article 247 of the KUHD, there are various types of coverage, including:<sup>12</sup>

- Fire coverage
- Coverage for agricultural products
- Maritime insurance and slavery hazards
- Life insurance
- Coverage for land, river and inland water transportation.

**2. Classification of coverage according to practice:** When viewed from practice, coverage can be classified as follows:

- Life insurance
- Transport coverage
- Fire coverage
- Varia coverage<sup>13</sup>

As we know, in the KUHD there are various forms of insurance for agricultural products, marine insurance, life insurance, land, river and inland water transportation insurance.

To meet the needs of society as a result of the development of modern technology where buildings, multi-storey houses, equipment (modern machines) stand, which in addition to bringing benefits that can make people happy also allow for the emergence of great risks, forms of The new coverage is known as variable coverage, namely coverage that cannot be interpreted purely as life insurance, fire and marine insurance, casualty insurance.<sup>14</sup>

**B.2. Binding Insurance Agreement**

In connection with the insurance being an agreement, the insurance must be binding in accordance with the provisions of article 1313 of the Civil Code which states: "An agreement is an act by which one or more people bind themselves to one or more other people."

And must fulfill the conditions for the validity of the agreement as stated in article 1320 of the Civil Code as follows:

1. Their agreement that binds them;
2. The ability of the parties to enter into an agreement;
3. A certain thing;
4. A lawful cause.

And based on the provisions of article 1338 of the Civil Code which states that:

"All agreements legally made are valid as law for those who make them." "An Agreement cannot be withdrawn other than by agreement of both parties, or for reasons that are sufficient by law." "An Agreement must be implemented in good faith."

<sup>11</sup> *Ibid.*, h. 33.

<sup>12</sup> *Ibid.*, h. 35.

<sup>13</sup> *Ibid.*, h. 38.

<sup>14</sup> *Ibid.*, h. 39.



## B.3. Principles of Insurance

### 1. Indemnity (Indemnity or Principle of Balance)

This principle is one of the main principles in insurance agreements, because it is the principle that underlies the working mechanism and provides direction for the purpose of the insurance agreement itself (especially for loss insurance). Insurance agreements have a main and specific objective, namely to provide compensation for losses to the insured party by the party guarantor.<sup>15</sup>

If the insured object is affected by a disaster, resulting in a loss, the insurer will provide compensation to restore the insured's financial position after the loss to the same as immediately before the loss occurred.

Thus, the insured is not entitled to compensation greater than the loss suffered.

This principle can be found at the beginning of insurance agreement arrangements, namely Article 246 of the Criminal Code: "Insurance or coverage is an agreement, by which an insurer binds himself to the insured by accepting a premium, to compensate him for a loss, damage or loss of expected profits which may be suffered because of an uncertain event."

This principle essentially contains two aspects, namely:

1. The first aspect, which is related to the purpose of the agreement, must be aimed at compensation which must not be directed at the insured party because payment of compensation will clearly occupy an advantageous position.

So if there is a clause that is contrary to this purpose, it causes the agreement to be invalidated;

2. The second aspect is related to the implementation of the insurance agreement as a legal whole. The whole or part must not conflict with the first aspect.

This is very important because the objectives to be achieved by the insurance agreement and in its implementation must meet certain conditions, namely for the insured party because obtaining compensation does not become a more profitable financial position.

### 2. Insurable Interest (Insured Interest)

\* Insurable interest is the second main principle in the insurance agreement. Every party who intends to enter into an insurance agreement must have an insurable interest, meaning that the insured party has such involvement with the consequences of an event that is not certain to occur and the person concerned suffers a loss.

\* Said to have an interest in the insured object if it suffers financial loss if a disaster occurs which causes loss or damage to the object.

\* This financial interest allows the insured to insure the insured's property or interests. If a disaster occurs on the insured object and it is proven that the insured has no financial interest in the object, the insured is not entitled to receive compensation. Regarding this interest, the KUHD regulates it in the provisions of Article 250 and Article 268.

### 3. Utmost Good Faith (Perfect Honesty)

\* It is our obligation to provide information as clearly as possible and thoroughly regarding all important facts relating to the insured object. This principle also explains the risks that are guaranteed and excluded, all terms and conditions of coverage clearly and thoroughly.

\* The obligation to provide these important facts applies:

- From the time the agreement regarding the insurance agreement is discussed until the insurance contract is completed, namely when we approve the contract;

- When extending the insurance contract;

- When changes occur to the insurance contract and regarding matters related to those changes.

\* This principle is actually a principle for every agreement, so it must be fulfilled by the parties entering into the agreement. Failure to fulfill this principle when closing an agreement will result in a defect of will, as regulated in Articles 1320-1329 of the Civil Code.

<sup>15</sup> Dwi Endah Ernawati, *Penerapan Asas-Asas Hukum Asuransi Dalam Perjanjian Asuransi Kendaraan Bermotor di PT. Asuransi Raksa Pratikara di Wilayah Surakarta*, Tesis, Semarang, 2009.



\* However, good faith is the main basis and trust that underlies every agreement and the law also does not protect parties who have bad intentions. Even though in general good faith is regulated in the provisions of the Criminal Code, specifically for insurance agreements there is still a need to emphasize good faith as required by article 251 of the Criminal Code.

#### 4. Subrogation (Guardianship)

\* The principle of subrogation (trust) is related to a situation where the loss experienced by the insured is the result of the fault of a third party (another person). This principle gives the insurer the right of guardianship by the insured if a third party is involved. This principle is regulated in Article 284 of the Trade Code, which is a principle which is a logical consequence of the principle of identity (balance).

\* In other words, if the insured suffers a loss due to the negligence or error of a third party, then XYZ, after providing compensation to the insured, will replace the insured in making a claim against the third party. The subrogation application mechanism is:

- The insured must choose one source of compensation, from a third party or from insurance;
- If the insured has received compensation for losses from a third party, he will not receive compensation from insurance, unless the amount of compensation from the third party is not in full;
- If the insured has received compensation from insurance, he may not sue a third party. Because the right to sue has been delegated to the insurance company.<sup>16</sup>

#### B.4. Risks in Coverage

The meaning of risk is the burden of loss resulting from an event beyond the fault. The danger of risk can be measured by the value of the item that is attacked by danger and causes harm to its owner. The greater the value of the object a person owns, the greater the risk. Small risks can still be handled by the owner alone, but if the risk is large, then the owner cannot handle it alone. So that a person or a company can work calmly, without worrying about unexpected losses, a company is needed that is willing to take over this big risk. The company needed is a liability or insurance company, which is able to take over the risk by entering into an insurance agreement.<sup>17</sup> The risk taken over by the insurance company is the insured's risk caused by an uncertain event that arises beyond the fault of the insured (article 673) of the Commercial Code.

#### B.5. Policies

The insurance agreement is consensual (article 257 KUHD), but article 255 KUHD requires that the insurance agreement be made in a deed called a policy.<sup>18</sup> So the policy is proof of the existence of an insurance agreement, but is not an element of the insurance agreement. In the absence of a policy, the insurance agreement does not become invalid, because the policy is not an absolute requirement for the formation of an insurance agreement, however the role of the policy is quite important,<sup>19</sup> except for several types of coverage, for example: articles 272, 280, 603, 606 and 615 of the Criminal Code.

According to law, the policy must be made by the insured, submitted to the insurer for signature. Within 24 hours, the insurer must return the policy to the insured after it is signed (article 259 of the Criminal Code). Here the policy must be made by the insured and not by the insurer. This was deliberately determined by the legislators, so that the position of the insured, who is generally economically weaker than the insurer, is somewhat protected.

Regarding the time when the policy must be signed and returned to the insured, it can be described as follows:

- a. If the insurance agreement is made by the insured with the insurer directly, then the time period given by law is 24 hours (article 259 KUHD)
- b. If the insurance agreement is made through a broker, then the time period is set at 8 (eight) days (article 260 KUHD)
- c. If there is negligence in implementing the provisions mentioned in articles 259 and 260 of the KUHD, then the insurer or broker is obliged to compensate the insured for losses arising as a result (article 261 of the KUHD).

<sup>16</sup> *Ibid.*, h. 62.

<sup>17</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 46.

<sup>18</sup> *Ibid.*, h. 61.

<sup>19</sup> M. Suparman Sastrawidjaja dan Endang, *Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito Usaha Perasuransian*, Alumni, Bandung, 1993.



However, in practice, the policy has been prepared by the insurer, while the insured has the right to amend it. According to insurers in Jakarta, when the policy must be returned to the insured, there is no need to determine a time limit, because the insurer will try to return the policy to the insured as quickly as possible.

## Fill in the Policy

For all types of coverage, except life insurance, the policy must contain the following items (article 256 KUHD):<sup>20</sup>

1. The day the insurance agreement is closed;
2. Name of the person closing the coverage, on his own behalf or on behalf of a third person;
3. A clear description of the insured object;
4. The amount of coverage, namely the amount of money, for which coverage is provided;
5. Perils covered by the insurer;
6. when the danger begins and when it ends;
7. Amount of premium;
8. Additional information for guarantors and special promises;
9. Signature of the guarantor

Apart from those mentioned above, there are still other provisions that must be mentioned in the policy, otherwise the coverage will be void;

1. Article 272 of the Criminal Code, regarding insurance, whereby the insured releases the insurer from all its obligations for the future;
2. Article 280 of the Criminal Code, regarding the insured who insures an object, then insures the same object again to another insurer;
3. Article 615 of the Criminal Code, regarding coverage for a profit that is expected to be obtained.

## B.6. Premium

The provisions of article 246 of the Commercial Code can be concluded that the insurer will only cover coverage by enjoying the premium from the insured. Thus, the premium is an achievement or reward that must be fulfilled by the insured for the risks borne by the insurer.<sup>21</sup>

Usually the premium is determined as a percentage or premium of the insured price, where the premium rate is not always the same from one company to another. The high and low premiums are influenced by several factors, including building location, nature of use, and building construction. The timing of premium payments is usually stated in the policy. In the event that the insured does not pay the premium within the specified time, based on the provisions of Article 1266 of the Civil Code, the insurer can request cancellation through the court. However, in practice this method is not used, usually the insurer uses a method by placing a clause in the policy which essentially means that if the premium is not paid by the insured within the specified time, the insurance will not work.<sup>22</sup>

The premium is paid in installments, so if a claim occurs the insured must pay the premium first or deduct the amount of compensation the insured will receive. Even though the amount of the premium has been determined in the policy, there is a possibility that it will change due to several factors as follows:

- \* There is an error in determining the amount of the premium.
- \* Because the risks for which coverage is provided change.<sup>23</sup>

## B.7. Claim

From the definition of an insurance agreement as stated in article 246 of the Criminal Code, it can be concluded that the insured is entitled to compensation for losses if an event arises for which coverage is provided, in addition to being obliged to pay a premium to the insurer.

<sup>20</sup> *Ibid.*, h. 62.

<sup>21</sup> *Ibid.*, h. 50.

<sup>22</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggungan*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1990, h. 41.

<sup>23</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 53.



In connection with this, if a loss arises due to an event for which coverage is provided, the insured will submit a claim for compensation to the insurer. The loss in question is a loss caused by an event that is not certain (evenement), namely an event that according to normal experience would not be expected to occur.<sup>24</sup>

The claim for compensation from the insured in insurance law is called a claim. Regarding the time limit for submitting a claim, it is usually specified in the policy, however in practice if an event occurs for which coverage is provided, the insured must immediately notify the insurer and must also fill out a loss form which in principle contains everything related to the loss experienced as estimated. etc.<sup>25</sup> With the report from the insured, the insurer will conduct an investigation regarding:

Whether a loss has actually occurred as a result of an event for which coverage is provided.

- a. Was the loss not caused by an element of intent on the part of the insured, was the object of coverage not insured by another insurance company for the full value, against the same peril (double coverage) and so on.<sup>26</sup>
- b. Does the insured really have an interest in the object of coverage, in connection with the provisions of article 250 of the Commercial Code which reads: "If a person who insures for himself or herself, or someone whose dependents are insured by another person, at the time of the insurance does not have an interest in the object insured, then the insurer is not obliged to compensate for the loss."

According to several scholars, including Wirjono Projudikoro, Emmy Pangaribuan Simanjutak, this interest does not have to be attached to the person who will receive compensation for losses. If these conditions are met, in principle the insurer will pay compensation for losses suffered by the insured, and the insured is expected to include evidence of the type which is usually mentioned in the policy. However, the law provides limitations on this responsibility, stated in article 249 and article 276 of the Criminal Code.<sup>27</sup>

According to article 249 of the Criminal Code, there are 3 (three) types of limitations on the insurer's responsibility for insured objects, namely:

1. Losses arising from defects in the insured object itself.

Defects themselves are defects that are inherent in the object, not from the outside, such as overripe fruit or unseaworthiness of a ship.

2. Losses arising from the damage to the insured object itself.

Rot itself can be divided into (2) parts as follows:

- Rottenness that originates from one's own defects.
- Rottenness that is not caused by defects themselves, but due to external influences such as temperatures that are too high or too low.

What the insurer is not responsible for here is rot that originates from the defect itself.

3. Losses arising from the nature of the insured object.

So the loss here is directly caused by the object itself, not from outside such as glass which is easily broken.<sup>28</sup>

Even though these restrictions have been implemented, Article 249 of the Criminal Code itself still provides the possibility for the insured to enter into a coverage agreement, as long as it is stated explicitly in the policy. Meanwhile, according to article 247 of the Criminal Code, the insurer is not responsible for losses arising as a result of the insured's own fault.

Furthermore, in the case of compensation for losses, the balance principle or indemniteit principle applies to loss coverage. What is meant by this principle is that the compensation provided by the insurer must not exceed the losses actually suffered by the insured, and the amount must be balanced between the losses actually suffered by the insured. is truly suffered by the amount of

---

<sup>24</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggung dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1990, h. 51.

<sup>25</sup> *Ibid.*, h. 46.

<sup>26</sup> Abdul Kadir Muhammad, *Pokok-Pokok Hukum Pertanggung*, Alumni, Bandung, 1983, h. 102.

<sup>27</sup> *Ibid.*, h. 91.

<sup>28</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggung*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1990, h. 59.





coverage. This principle can be concluded from the provisions of article 252 and article 253 paragraph (1) of the Commercial Code.<sup>29</sup>

The claim submitted by the insured can be a partial loss (partial loss) and can also be a total loss (total loss). In the event that the claim is a total loss, the insurer will only pay the maximum loss of the insurance price, whereas if the claim is a partial loss, the compensation for the loss will be based on the balance between the insurance amount and the actual value of the object.

This principle of balance in life insurance or social insurance is not important, because in life insurance or social insurance the compensation is based on a predetermined amount, without taking into account the actual situation. Apart from the insurer's obligation to compensate losses for claims submitted by the insured, the insurer also has the right to reject the claim.

The rejection of the claim can occur as follows:

- a. The insured's claim is unreasonable.
- b. It is proven that the insured had bad intentions
- c. There is no complete evidence.

## **B.8. Expiration of Coverage**

The end of coverage can be differentiated in 2 (two) ways:

1. Termination of coverage prematurely (extraordinary).
2. Reasonable end of coverage.

### **Ad.1. Termination of coverage prematurely (extraordinary).**

In principle, coverage will end if one party does not fulfill the provisions stated in the policy. Things that generally result in premature termination of coverage include:

- a. If the insured has no interest in the insured object.
- b. If there is double insurance for one type of item
- c. If canceled by one party.<sup>30</sup>

### **Ad.2. Reasonable end of coverage.**

In principle, the coverage will end automatically, including:

- a. If the coverage period has expired.
- b. In the event that the insurer pays the total loss claim. If a claim is a total loss, the coverage will end, even though the coverage period has not expired.
- c. If the coverage is canceled with the consent of both parties, even though the coverage period has not expired.<sup>31</sup>

## **C. Varia or Casualty Coverage or Varia Insurance**

The progress of science, especially regarding technology, is very rapid. The results of technological progress are good in the fields of communication, industry, service construction, even in the field of domestic life, apart from providing goodness for human life, it turns out that the influence of technology has brought developments in insurance, this is understandable because using the tools resulting from modern technology has given rise to new risks.

With the emergence of new risks, new interests arise which need to be sought to protect them or provide guarantees for them, in the sense that these new interests require coverage. Therefore, new forms of insurance that arise due to the need to protect various interests in property, which are increasingly felt in the current era of modern technology, are included in the category of Casualty insurance or Accident insurance or variable insurance.<sup>32</sup> (according to the terms used by E.R. Hardy Ivamy to understand coverage for personal or personal accidents, coverage for accidental loss or damage to property or coverage for liability for an accident).<sup>33</sup>

<sup>29</sup> *Ibid.*, h. 64.

<sup>30</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 87.

<sup>31</sup> Abdul Kadir Muhammad, *Pokok-pokok Hukum Pertanggungan*, Alumni, Bandung, 1983, h. 123.

<sup>32</sup> A. Abbas Salim, *Dasar-dasar Asuransi*, Tarsito, Bandung, 1985, h. 83.

<sup>33</sup> Emmy Pangaribuan Simanjutak, *Hukum pertanggungan dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 1990, h. 93.



From the description above, it can be seen that progress or developments in insurance life in Indonesia are not balanced with the formation of regulations that can accommodate all these developments, so that many types of coverage are not yet regulated in the KUHD.

What is used as the legal basis for the application of new types of coverage that arise in practice are the provisions contained in article 247 of the Criminal Code regarding forms of coverage, because this article does not legally limit or prevent the emergence of other types of coverage according to community needs.<sup>34</sup>

It can be said that Article 247 of the Criminal Code states: "Insurance can include, among other things, fire hazards, dangers that threaten agricultural products, the lives of one or more people, dangers at sea and the dangers of slavery, dangers of transportation on land and rivers and in waters. inland."

The nature of article 247 of the KUHD is numerical, not limitative. In addition to this article, it is also possible for new forms of coverage to emerge based on article 268 of the KUHD which states that in principle all interests can be the subject of coverage as long as they meet the following conditions:

- a. Can be valued in money
- b. Threatened by a danger
- c. Not excluded by law.<sup>35</sup>

Included in the Casualty Insurance or variable coverage category include:<sup>36</sup>

1. Motor vehicle insurance (Automobile Insurance).
2. Boiler insurance.
3. Glass or glass insurance (Glass insurance).
4. Burglary insurance.
5. Cash in transit insurance.
6. Coverage Money in Savings (Cash in safe insurance).
7. Construction Insurance (Erection Insurance).
8. Machine Tool Insurance (Machinery insurance/Engineering Insurance).
9. Industrial Products Coverage.
10. Contractor's all risk insurance.
11. Credit Coverage
12. Coverage for legal liability (Liability Insurance)

In this article the author will discuss Machinery breakdown insurance or what is hereinafter called MBI in practice at PT. Semen Indonesia, therefore the author will provide a definition of what is meant by MBI.

In essence, MBI is accident coverage for machines and their mechanical equipment. Losses that must be replaced are physical losses related to unforeseen mechanical and electrical damage or damage to machines that are running or stationary as a result of an accident. both from outside and from within the machines themselves. External causes, for example: material errors, circuit breaker, explosion and so on.

The losses that are excluded are damage due to wear and tear, depreciation, fire, lightning, theft, landslides, floods, earthquakes, war, defects in goods. All losses arising from the above events cannot include mechanical and electrical damage.

## RESEARCH METHODS

In analyzing the results of this research, the author uses a case study using a normative legal research approach. Method with a normative legal research approach,<sup>37</sup> This means that existing problems are researched based on existing laws and regulations and literature related to the problem.

- a. Legal Materials

<sup>34</sup> *Ibid.*, h. 35.

<sup>35</sup> *Ibid.*, h. 36.

<sup>36</sup> *Ibid.*, h. 93.

<sup>37</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan Kedua, Kencana, Jakarta, 2008, h. 29.



Legal materials, in normative legal research, can be grouped into two types, namely:

1. Primary Legal Materials

Primary legal materials, including all statutory regulations that have the power to enforce their implementation. In this case it must be mentioned hierarchically <sup>38</sup>. Legal materials that are binding in this research include:

- Civil Code (staatsblad 1847 Number 23).
- Commercial Law Book (staatsblad of 1847 Number 23) as amended several times, most recently by Law Number 4 of 1971 concerning Amendments and Additions to the Provisions of Article 54 of the Commercial Law Book (State Gazette of 1971 Number 20 , Supplement to State Gazette Number 2959);
- Law Number 2 of 1992 concerning Insurance Business (State Gazette of 1992 Number 13, Supplement to State Gazette 3467).

2. Secondary Legal Materials

Secondary legal materials, namely all notes, documents and works of scholars in the legal field that can help in understanding the meaning and intent of statutory regulations.<sup>39</sup>

b. Methods for Collecting Legal Materials

This writing was carried out using library research, namely by reading and examining books and data related to the problem and studying other literature which was then based on the library study which was then processed and formulated systematically in accordance with each subject and subject matter. .

c. Analysis of Legal Materials

Processing of legal materials uses the descriptive analysis method, meaning the most basic analysis to describe the general state of the data, the analysis of legal materials is obtained based on reality, then linked to the application of applicable laws and regulations, discussed, analyzed, then conclusions are drawn which are finally used to answer the problems at hand. There is.<sup>40</sup>

## DISCUSSION

### 1. OBJECT OF IMPLEMENTATION OF MACHINERY BREAKDOWN INSURANCE IN PRACTICE AT PT. SEMEN INDONESIA

#### A. Insurance Company Collaborating with PT. Semen Indonesia in terms of Machinery Breakdown Insurance.

The insurance agreements entered into by PT Semen Indonesia with several insurance companies, not only the Machinery Breakdown type of insurance, and PT Semen Indonesia entered into insurance agreements with several insurance companies for 26 (twenty six) years. Meanwhile, the insurance companies chosen by PT Semen Indonesia are as follows:

1. PT Asuransi Jasa Indonesia
2. PT Asuransi Ramayana
3. PT Tugu Pratama Indo
4. PT Asuransi Wahana Tata
5. PT Asuransi Berdikari
6. PT Staco Jasa Pratama
7. PT Asuransi Astra Buana
8. PT Asuransi Tugu Indo
9. PT Asuransi Asoka Mas

Of the nine insurance companies above, those chosen by PT Semen Gresik to cover Machinery Breakdown Insurance are:

1. PT Jasa Indonesia
2. PT Asuransi Ramayana
3. PT Asuransi Wahana Tata
4. PT Tugu Pratama Indonesia

<sup>38</sup> *Ibid.*, h. 32.

<sup>39</sup> *Ibid.*, h. 34.

<sup>40</sup> *Ibid.*, h. 40.



5. PT Asuransi Astra Buana
6. PT Asuransi Asoka Mas
7. PT Asuransi Tugu Indo<sup>41</sup>

Meanwhile, apart from the 7 (seven) insurance companies above, PT Semen Indonesia does not cover Machinery Breakdown Insurance. Because the insurance company does not meet several criteria as follows:

1. The experience
2. annual report (annual report)
3. company rating
4. The re-insurance rating is not suitable<sup>42</sup>

Each insurance company that covers Machinery Breakdown Insurance is also 26 (twenty six) years old, while the newest/youngest is 5 (five) years. PT Semen Indonesia has closed Machinery Breakdown Insurance for 26 (twenty six) years because its capacity is good and PT Semen Indonesia in closing Machinery Breakdown Insurance always chooses an insurance company that has been used for 5 (five) years.<sup>43</sup>

The service from each insurance is not the same, some are satisfactory and some are unsatisfactory. In this case, what is said to be unsatisfactory is, for example: the financial settlement takes a long time (the financial calculations take a long time) so that the replacement will also take a long time. However, the insurance company whose service is satisfactory is PT. Indonesian Services Insurance. PT. Asuransi Jasa Indonesia or hereinafter referred to as PT. Jasindo provides satisfactory service from policy delivery to claim settlement. Meanwhile, insurance other than PT. Asuransi Jasa Indonesia provides satisfactory service only for policy delivery and premium billing. If a claim occurs, insurance other than PT Jasindo is somewhat less than satisfactory.<sup>44</sup>

The responsibility of each insurance depends on the percentage of each insurance. What this means is: PT Semen Indonesia in insuring Machinery Breakdown Insurance always uses co-insurance, for example:

1. PT Asuransi Jasa Indonesia compensation costs paid are 55%
2. PT Asuransi Ramayana compensation costs paid are 20%
3. PT Wahana Arrangements for compensation costs paid at 10%
4. PT Asuransi Tugu Pratama compensation costs paid are 10%
5. PT Asuransi Astra Buana compensation costs paid are 5%
6. PT Asuransi Asoka Mas compensation costs paid are 2.5%
7. PT Asuransi Tugu Indo compensation costs paid are 2.5%

So the responsibility for each insurance company is only the agreed percentage.<sup>45</sup>

Next, to know clearly about the implementation of Machinery Breakdown Insurance, we need to know how the policy and the obligations of the insurer are.

## **B. Polis Machinery Breakdown Insurance**

### **“MACHINERY INSURANCE POLICY”**

“While the insured in the schedule here to have been made for the PT. Jasindo (hereinafter "Insurer") a written proposal by completing the insurance application form that machine, along with other statements made in writing by the insured for the purposes of this policy, shall be deemed to be included here.

The witnesses present insurance policy, subject to the insured has paid premiums to the insurance company mentioned in the schedule and subject to the terms, exclusions, provisions and conditions contained, herein or endorsed hereon.

The insurance company agrees with the Insured that if at any time during the period of insurance stated in the schedule or during the next period that the insured pays the insurance company to receive a premium for the extension of this policy, the goods (or

---

<sup>41</sup> Data Hasil Penelitian dan Wawancara tentang Asuransi Kerusakan Mesin di PT. Semen Indonesia dengan Wahyu Nugroho SE, Seksi Asuransi di PT. Semen Indonesia.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*



any part of it) into the schedule, while on the premise mentioned there in, suffered an unexpected loss and sudden physical or damage from causes such as defects in casting and material, faulty design, faults at workshop or erection, bad workmanship, lack of skill, carelessness, shortage of water in the boiler, explosion physical, rending account of centrifugal force, short circuit, storm, or from any other cause not hereinafter excluded, in a manner that requires repair or replacement.

The insurance company will indemnify the insured in case of loss or damage, as hereafter provided, the cash payment, replacement or repair (at the option of insurance) up to an amount not exceeding in any one year of insurance in respect of each item specified in the schedule, the number of are determined opposite to him, and not exceed the total amount of all insured stated in the schedule to this.

This policy applies to insured items after successful completion of acceptance tests their performance whether they are at work or at rest, oe is being dismantled for cleaning purpose remodel, or in the process of the above operation itself, or when being shifted within the premises, or for re- subsequent erection.”

### ”MACHINE INSURANCE POLICY”

“Meanwhile, the insured in the schedule here has been made for PT. Jasinndo (hereinafter "Insurer") written proposal by filling in the Machinery Insurance application form which, together with other reports made in writing by the insured for the purposes of this policy, will be deemed to be included herein.

Now this policy witnesses insurance which, subject to the insured having paid to the insurance company the premium stated in the schedule and subject to the terms, exceptions, provisions and conditions contained, herein or endorsed herein.

The insurance company hereby agrees with the Insured that if at any time during the insurance period listed in the schedule or during any subsequent period for which the insured pays the insurance company may receive premiums for renewal of this policy, the items (or any part thereof) are included in the schedule, while on the stated premise is in, suffer unexpected and sudden physical loss or damage from causes such as defects in casting and materials, design errors, errors in the workshop or erection, poor workmanship, lack of skill, carelessness, lack of water in the boiler, explosion physical, tearing account centrifugal force, short circuit, storm, or from other causes are not excluded subsequently, in a way that requires repair or replacement.

The insurance company will compensate the insured in the event of such loss or damage, as hereinafter determined, by cash payment, replacement or repair (at the insurer's option) up to an amount not exceeding in one insurance year in respect of each item specified in the schedule, the amount determined against it and shall not exceed all the total amounts stated in the schedule insured hereby.

This policy applies to insured shipments upon successful completion of the performance of their acceptance tests whether they are at work or at rest, or being disassembled for the purpose of overhaul cleaning, or in the process of the above mentioned operations themselves, or while being shifted within a location, or during return then an erection.”<sup>46</sup>

The Machinery Breakdown Insurance agreement must be entered into in writing as stated in article 255 of the Criminal Code which states: "Insurance must be carried out in writing with a deed called a policy."

This means that the Machinery Breakdown Insurance agreement must be entered into in writing because the policy is perfect evidence of what is promised in the Machinery Breakdown Insurance, without a policy the proof will be difficult and limited.

However, the provisions contained in article 255 of the Commercial Code are not a requirement for an insurance agreement to exist, because the insurance agreement exists after the reciprocal rights and obligations have been established between the insurer and the insured. The insurance agreement is in written form, which is called a "Covernote". Covernote This can be used as evidence if a claim occurs when the policy has not been completed. The contents of the policy according to KUHD article 256 are as follows:

1. The day on which coverage is held;
2. Name of the person providing insurance, for his or her own dependents or for a third person;
3. A fairly clear formulation regarding the objects insured;
4. Amount of coverage;
5. Dangers covered by the insurer;

<sup>46</sup> *Ibid.*



6. The time when the danger begins and ends for the insured's dependents;
  7. Insurance premium;
  8. In general, all circumstances whose knowledge may be of genuine interest to the guarantor, and all promises made between the parties. For example, risks that must be borne by the insured himself (excess/deductible).
- Meanwhile, the contents of the policy according to the Machinery Breakdown Insurance policy at PT Semen Indonesia are the same as the contents of the policy according to KUHD article 256.
- The definition of self-borne risk is a certain amount borne by the insured himself, in compensation payments will be reduced by a certain amount mutually agreed upon when the claim is submitted.

### C. Implementation of Machinery Breakdown Insurance

Basically, Munich-re's standard Machinery Breakdown insurance coverage covers all damage and/or loss that occurs suddenly and unexpectedly and is not excluded in the policy for the machines insured.

The guarantee provided lasts when the machines:

1. is running
2. is resting
3. is being cleaned
4. is being dismantled
5. is being repaired or repaired, as long as the machines are in a certain location as stated in the policy summary.

In general, the risks that can be guaranteed in a Machinery Breakdown policy include:

1. Carelessness and lack of skill of machine operators in operating or maintaining machines. From the existing statistical data, it is clear that the majority of Machinery Breakdown insurance claims are caused by human error, for example:
  - a. running the engine at too high a speed.
  - b. safety devices (controls) not working because they forgot to check them.
  - c. forgetting to put equipment in rotating parts of machines after finishing repairing the machine.
2. Faulty design, for example:
  - a. calculation error
  - b. image error
  - c. technical specification/requirement errors.
3. errors that occur during repair, dismantling and cleaning in the workshop.
4. error during installation (fault in erection).
5. imperfections in materials and casting. Generally, this damage is encountered while the machine is being operated while the manufacturer's warranty period has expired.
6. Short Circuit (short circuit), Excess Voltage (excessive electric voltage), Electrical Arcing (sudden release of electric sparks) and other damage that occurs due to electrical disturbances in electrical equipment.
7. Throwing of machine parts due to centrifugal force.

This usually occurs in machines with very high rotation, for example steam turbines, water turbines, gas compressors, etc.
8. lack of water in a boiler.
9. physical explosion / impulse (physical explosion / impulse).
10. other damage that is sudden and unexpected and is not excluded for the object of coverage.

### Exception

Some of the exceptions contained in the Machinery Breakdown Insurance policy are:

1. Fire (Fire)
2. Lightning strike
3. Chemical explosion (Chemical Explosion)
4. Burglary
5. Theft.



6. Wear and tear, cavitation, erosion, corrosion that occurs due to routine use of machines in an operation.
7. All risks of natural disasters (act of gods), such as earthquakes, volcanic eruptions, landslides, floods, etc., except hurricanes which are still covered by the MBI policy
8. Deliberate act (willful act or gross negligence) on the part of the insured or his representative.
9. War, civil unrest, riots, strikes, revolutions and the like.
10. Damage that is still the responsibility of the supplier or factory.
11. Damage to machine parts that wear out quickly, for example: rubber, tires, etc. whose lifespan is very short (they must be replaced regularly).
12. Damage due to nuclear reactions, nuclear radiation or radioactive contamination
13. Consequential loss or loss of profit.
14. Deductibles listed in the policy summary.

MBI is included in Non-project engineering insurance, which guarantees machines in continuous use/operation, so in general the coverage period for the M.B. policy is: is annual (annual cover) and can be renewed every year for the same period.

If new machines are installed for the first time in a factory, then after going through an installation period (erection), it is followed by a testing period (cold testing, hot testing or performance testing/commissioning) and the factory/machine is handed over by the contractor to the owner. , then from that moment the MBI policy comes into effect.

The provision of compensation in MBI insurance is that if a loss occurs, the amount of compensation that will be paid to the insured is based on the damage that occurs:

- a. If the damage is only partial and only requires repair, the insurer will pay all costs necessary to repair it. Compensation payments provided by the insurer also include transportation costs to and from the workshop, reinstallation fees.
- b. If the damage that occurs is a total loss, then the insurer will pay the actual price of the machine before the damage occurred. If a total loss occurs, the insured will be subject to depreciation when receiving this compensation. This depreciation is charged on machines that experience partial damage or total loss. The definition of depreciation is the depreciation of asset value due to the influence of time of use.

The amount of depreciation is determined by the results of an agreement between PT Semen Indonesia and Asuransi Wahana Tata. Depreciation at PT Semen Indonesia is carried out on machines that are more than 4 years old.

PT Semen Indonesia carries out depreciation for machines whose age is:

1. In 1957 it was subject to 40%
2. In 1978 it was subject to 25%
3. In 1994, 1997, 1998, 2.5% was charged.<sup>47</sup>

#### Depreciation calculation

$$\begin{aligned} \text{Replacement} &= \text{repair value} - (\text{own risk} + \text{depreciation}) \\ &= \text{IDR } 700,000.00 - (\text{IDR } 100,000.00 + \text{IDR } 400,000.00) \\ &= \text{IDR } 700,000.00 - \text{IDR } 500,000.00 \\ &= \text{IDR } 200,000.00^{48} \end{aligned}$$

#### Premium calculation

The premium rate components basically consist of:

- a. Basic premium rates for basic coverage (basic cover)  
The amount depends on the type of factory/plant or type of machine/equipment being operated, right?
- b. Additional premium charges for extended coverage  
The amount depends on the extent of additional collateral taken.<sup>49</sup>

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*



**Example of Premium Calculation**

**MACHINE DAMAGE INSURANCE PREMIUM ALLOCATION**

**POLICY NR.513.404.333.99.0013**

**OWNED BY PT. CEMENT GRESIK (PERSERO)**

**FOR THE INTEREST OF THE TUBAN CEMENT FACTORY I**

Total insurance value: Rp. 225.923.477.764.12

Rate : 3.50% o p.a.

Insurance Period: 31.12.1999 to 31.12.2000

100% Premium: Rp. 225,923,477,764.12 x 3.50% o = IDR 790,732,172.17

Policy Cost = Rp. 7,500.00 Stamp duty = Rp. 4,000.00

Total (100% Premium + Policy Fee + Stamp Duty) = Rp. 790,743,672.17

Name of Insurance Company and respective shares:

1. PT. Indonesian Services Insurance:

55% x IDR 790,732,172.17 = IDR. 434,902,694.70

Policy Cost = Rp. 7,500.00

Stamp duty = Rp. 4,000.00

Rp. 434,914,194.70

2. PT. Ramayana Insurance: 20% x Rp. 790,732,172.17 = Rp. 158,146,434.43

3. PT. Wahana Tata Insurance: 10% x Rp. 790,732,172.17 = Rp. 79,073,217.22

4. PT. Tugu Pratama Indonesia: 10% x Rp. 790,732,172.17 = Rp. 39,536,608.61

5. PT. Astra Buana Insurance: 5% x Rp. 790,732,172.17 = Rp. 39,536,608.61

6. PT. Asoka Mas Insurance: 2.5% x Rp. 790,732,172.17 = Rp. 19,768,304.30

7. PT. Indo Tugu Insurance: 2.5% x Rp. 790,732,172.17 = Rp. 19,768,304.30

T O T A L Rp. 790,743,672.17

**2. SETTLEMENT OF CLAIMS CONTAINED IN INSURANCE AT PT. INDONESIAN CEMENT**

**A. Obligations for the Insured in the Event of Loss or Damage**

From the definition of an insurance agreement as stated in article 246 of the Criminal Code, it can be concluded that the insured is entitled to compensation for losses if an event arises (an uncertain event) for which coverage is provided, in addition to being obliged to pay a premium to the insurer.

In connection with this, if a loss arises due to an event for which coverage is provided, the insured will submit a claim for compensation to the insurer. The loss in question is a loss caused by an event that is not certain (evenemet), namely an event that according to normal experience would not be expected to occur.<sup>50</sup>

The claim for compensation from the insured in insurance law is called a claim. Regarding the time limit for submitting a claim, it is usually specified in the policy, however in practice if an event occurs for which coverage is provided, the insured must immediately notify the insurer and must also fill out a loss form which in principle contains everything related to the loss experienced as estimated. etc. With the report from the insured, the insurer will conduct an investigation regarding:

Has a loss actually occurred as a result of an event for which coverage is provided:

a. Whether the loss occurred was not caused by an element of intent on the part of the insured, whether the object of coverage was not insured by another insurance company for the full value, against the same danger (double coverage) and so on.<sup>51</sup>

b. Does the insured really have an interest in the object of coverage, in connection with the provisions of article 250 of the Commercial Code which reads: "If a person who has entered into insurance for himself or herself, or if a person for whom

<sup>50</sup> Emmy Pangaribuan Simanjutak, *Hukum Pertanggungungan dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1990, h. 51.

<sup>51</sup>Abdul Kadir Muhammad, *Pokok-Pokok Hukum Pertanggungungan*, Alumni, Bandung, 1983, h. 102





insurance has been entered into, does not have any interest in the insured item at the time the insurance is made, then the insurer is not obliged to provide compensation."

If these conditions are met, in principle the insurer will pay compensation for losses suffered by the insured, and the insured is expected to include evidence of the type which is usually mentioned in the policy. However, the law provides limitations on this responsibility, stated in article 249 and article 276 of the Criminal Code.<sup>52</sup>

According to article 249 of the Criminal Code which states: "For damage or loss arising from a defect, self-rotting, or directly arising from the nature and type of goods insured, the insurer is never responsible, unless insurance has also been expressly provided for that."

Even though these restrictions have been implemented, article 249 of the Criminal Code itself still provides the possibility for the insured to enter into a coverage agreement, as long as it is stated explicitly in the policy. Meanwhile, according to article 276 of the Criminal Code, the insurer is not responsible for losses arising as a result of the insured's own mistakes.

The insurance agreement aims to compensate the insured for losses that he or she may suffer. For this reason, coverage can be called an identity agreement. The word "identity" from Latin means: compensation for losses. This principle can be found at the beginning of the insurance agreement arrangement, namely Article 246 of the Commercial Code: "Insurance or coverage is an agreement, by which an insurer binds himself to the insured by accepting a premium, to compensate him for a loss, damage or loss of expected profits which he may suffer due to an uncertain event."

This principle essentially contains two aspects, namely:<sup>53</sup>

- a. The first aspect, which is related to the purpose of the agreement, must be aimed at compensation which must not be directed at the insured party because the payment of compensation will clearly occupy an advantageous position. So if there is a clause that is contrary to this purpose, it will cause the agreement to be invalidated;
- b. The second aspect is related to the implementation of the insurance agreement as a legal whole. In whole or in part it must not conflict with the first aspect. This is very important because the objectives to be achieved by the insurance agreement and in its implementation must fulfill certain conditions, namely that the insured party, because obtaining compensation does not become a more profitable financial position.

In this case, the insured must have the possibility of suffering a loss, a possibility which the insurer is willing to bear. An unearned gain, which the person expects to receive, but which he is not entitled to, is not included in the definition of "loss" as referred to above. People always ensure that insurance is not used to seek profit for oneself and is not used as hidden speculation.

The insured must have an "interest" in the insured loss, not about it. For this reason, the teaching about interests is a common thread for insurance and is regulated in several articles, for example in articles: 250, 252, 253, 274, 275, 277, 279 and 284 of the Commercial Code.

According to article 268 of the Criminal Code, the interests contained in insurance are all kinds of interests that can be valued in money, can be attacked by danger and are not excluded by law.<sup>54</sup>

The Obligations for the Insured in the Event of Loss or Damage are in accordance with the insurance policy between PT. Semen Indonesia with PT. Jasindo:

1. After knowing or when he is deemed to have known about loss or damage to property and/or interests insured under this policy, the Insured must:
  - a. immediately notify the insurer;
  - b. within 7 (seven) calendar days, provide a written statement containing the particulars that he knows about the loss or damage and, if circumstances permit, the statement should be accompanied by notification about everything that was burned, destroyed, lost, damaged and saved as well as about cause of loss or damage as far as he knows or suspects.
2. When loss or damage occurs, the insured must:
  - a. as far as possible, save and protect the assets or interests that are insured and allow other people to save and protect said assets and/or interests;

<sup>52</sup> *Ibid.*, h. 91.

<sup>53</sup> Dwi Endah Ernawati, *Penerapan Asas-Asas Hukum Asuransi Dalam Perjanjian Asuransi Kendaraan Bermotor Di PT. Asuransi Raksa Pratikara di Wilayah Surakarta*, Tesis, Semarang, 2009.

<sup>54</sup> H.M.N. Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986, h. 32.



- b. provide full assistance to the insurer or its representative or other party appointed by him to carry out research on the loss or damage that occurs
- c. maintain the safety of insured property and/or interests that still have value.

All rights to compensation are lost if the provisions in this article are not fulfilled by the insured.<sup>55</sup>

#### **B. Procedure for Submitting a Claim in Machinery Breakdown Insurance.**

When an event occurs which may give rise to a claim under Machinery Breakdown Insurance:

1. The insured must immediately notify the insurer either by telephone, telegram or written letter to the insurer explaining the damage and other information regarding the object of coverage within 14 days after the accident occurs.
2. The Insured must immediately take steps to minimize the amount of loss/damage.
3. The Insured must endeavor to secure the damaged parts to give the Insurer or designated person an opportunity to carry out an inspection.
4. The insured must complete the information and documents required by the insurer.<sup>56</sup>

The responsibility of the Insurer is to reimburse the costs of losses due to the condition of the asset to its original state, without taking into account profit or loss and the Insurer is responsible within 3 X 24 hours.<sup>57</sup>

After notification from the insured to the insurer in accordance with the time provisions mentioned above, the insurer can give permission to the insured to carry out repairs or replacement for minor losses/damages. However, the insurer's representative must be given the opportunity first to inspect the loss/damage before it is repaired or replaced.

#### **C. Dispute Resolution in Machinery Breakdown Insurance.**

If there is a dispute regarding compensation for losses, both parties, both the insured and the insurer, can choose 2 (two) legal remedies, namely through court and through arbitration.

Legal remedies through the courts are: the insured files a lawsuit at the local district court. After the lawsuit is accepted, the court will summon the insurer by issuing a summons. Then the lawsuit will be resolved by ending with a decision issued by the judge.

Meanwhile, arbitration legal remedies are:

1. Both parties mutually appoint an arbitrator, and this intention is conveyed in writing by the party concerned to the other party.
2. If the appointment of an arbitrator as intended in paragraph (1) above is not carried out within 15 (fifteen) calendar days, each party appoints an arbitrator and the two arbitrators appoint a third arbitrator.
3. If the appointment as intended in paragraph 2 (two) above is not carried out within 60 (sixty) calendar days from receipt of the request in question, then the party who is more prepared can submit a request to the General Chair of the Indonesian Insurance Council to appoint and appoint 3 (three) arbitrators, one of whom acts as Chairman of the Arbitration Panel.
4. The death of one of the parties does not cancel or affect the authority or power granted by the Arbitrator. In the event that an Arbitrator dies, his replacement is appointed by the party who appointed the deceased Arbitrator.
5. Rights, obligations and responsibilities as well as procedures for arbitration proceedings are determined by the Arbitrator and are based on applicable laws and regulations.

Furthermore, it is expressly stipulated that the Arbitration decision is binding on both parties and is a prerequisite for any right to file a claim under this policy.

#### **D. Factors That Influence Claim Settlement in Machinery Breakdown Insurance.**

##### **1. Insurer Factor**

- a. Insurers must immediately carry out a survey
- b. The insurer must immediately provide an official letter/document to the insured requesting complete supporting documents for the claim.
- c. If the documents have been fulfilled by the insured, the insurer will immediately carry out an analysis and calculation of compensation.

---

<sup>55</sup> Data Hasil Penelitian dan Wawancara tentang Asuransi Kerusakan Mesin di PT. Semen Indonesia dengan Wahyu Nugroho SE, Seksi Asuransi di PT. Semen Indonesia.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*



- d. Immediately hand it over to the insured.
2. Insured factor
  - a. Provide information to the insurer/survey the insurer openly about what is known about the damage.
  - b. Complete the documents requested by the insurer.

## CLOSING

### 1. Conclusion

- a. In this case the object insured by PT. Semen Indonesia to PT. Jasindo is all damage and/or that is sudden and unexpected and is not excluded in the policy or the machines insured. Compensation guarantee in Machinery Breakdown Insurance between PT. Semen Indonesia with PT. Jasindo if a loss occurs, what PT Jasindo will pay to PT Semen Indonesia is based on the damage.
- b. In the event of an insurance claim for machine damage, PT Semen Indonesia must immediately notify PT Jasindo about the loss/damage within 7 (seven) calendar days and must assist PT Jasindo in conducting a survey to calculate the compensation that will be given. PT Jasindo's responsibility is to compensate for losses due to the asset's condition becoming its original condition, without taking into account profit or loss. In this case, PT Jasindo is responsible within 3 x 24 hours and beyond that time PT Jasindo is no longer responsible. If there is a dispute regarding Machine Damage Insurance between PT Semen Indonesia and PT Jasindo in terms of claims, then PT Semen Indonesia and PT Jasindo agree to take legal action, namely through arbitration or through the local District Court.

### 2. Suggestion

- a. In connection with the increasingly advanced science, development of modern technology, development and industrial businesses, it is necessary to recommend that every business sector that uses modern technology insures its work under Machinery Breakdown Insurance or Machinery Damage Insurance so that the activity or business can run smoothly. fluent.
- b. Bearing in mind that the forms of Engineering Insurance, in this case Machinery Breakdown Insurance, are not yet regulated in the Commercial Code, to provide more legal protection and certainty to the public and in the context of establishing the National Insurance Law, it is best that these forms of insurance are regulated.

## REFERENCES

1. Abbas Salim, *Dasar-dasar Asuransi*, Tarsito, Bandung, 1985.
2. Abdul Kadir Muhammad, *Pokok-Pokok Hukum Pertanggungan*, Alumni, Bandung, 1983.
3. Abdul Kadir Muhammad, *Pokok-Pokok Hukum Pertanggungan*, Alumni, Bandung, 1990.
4. Abdul Kadir Muhammad, *Pokok-Pokok Hukum Pertanggungan*, Alumni, Bandung, 1983.
5. Data Hasil Penelitian dan Wawancara tentang Asuransi Kerusakan Mesin di PT. Semen Indonesia dengan Wahyu Nugroho SE, Seksi Asuransi di PT. Semen Indonesia.
6. Djoko Prakoso, *Hukum Asuransi Indonesia*, Cetakan Kelima, Rineka Cipta, Jakarta, 2004.
7. Dwi Endah Ernawati, *Penerapan Asas-Asas Hukum Asuransi Dalam Perjanjian Asuransi Kendaraan Bermotor di PT. Asuransi Raksa Pratikara di Wilayah Surakarta*, Tesis, Semarang, 2009.
8. Emmy Pangaribuan Simanjutak, *Hukum Pertanggungan dan Perkembangannya*, Seksi Hukum Dagang Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 1990.
9. Emmy Pangaribuan Simanjutak, *Hukum Pertanggungan*, Seksi Hukum Dagang Fakultas Hukum UGM, Yogyakarta, 1990.
10. H.M.N Purwosutjipto, *Pengertian Pokok Hukum Dagang Indonesia*, Jilid 6, Cetakan Kedua, Djembatan, Jakarta, 1986.
11. M. Suparman Sastrawidjaja dan Endang, *Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito Usaha Perasuransian*, Alumni, Bandung, 1993.
12. Peter Mahmud Marzuki, *Penelitian Hukum*, Cetakan Kedua, Kencana, Jakarta, 2008.

*Cite this Article: Dwi Tatak Subagiyo, Ahmad Setiawan, Indah Herlina (2023). Implementation of Machinery Breakdown Insurance at PT Semen Indonesia. International Journal of Current Science Research and Review, 6(12), 7561-7579*