



## Insurance Broker Liability Concept as a Profession Which Is Just in Indonesia

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### **Abstract**

Insurance brokers are professionals who provide recommendations or represent policyholders in insurance and sharia insurance. The Insurance Law requires that insurance brokerage companies be in the form of limited liability companies that adhere to limited liability, with responsibility for the actions of insurance brokers falling under the principle of vicarious liability. The law states that insurance brokerage companies and reinsurance brokerage companies are responsible for the actions of insurance brokers who provide recommendations to policyholders regarding insurance coverage or closure. This article discusses the liability of insurance brokerage companies and insurance brokers for damages resulting from the negligence and mistakes of insurance brokers. The article adopts a normative juridical research method and uses a statute approach with analogical interpretation and a conceptual approach with systematic and reverse interpretation. The research finds that there is a need for a classification/categorization of worker categories in statutory provisions to provide certainty and legal protection. This classification should at least make a distinction between laborers, ordinary workers, and professional workers. The concept of vicarious liability is no longer relevant for professional workers, as they have a scope of duties, responsibilities, and authorities that differ from those of workers in general. They also receive different wages and rewards. The research suggests a theory of civil liability for the insurance broker profession in the form of compensation based on fault contribution. This theory takes into account the limited liability capabilities of limited liability companies and the principle of proportionality in creating justice. It balances the need for individuals to be fully responsible for their mistakes and negligence with the limited liability of companies.

**Keywords:** *Accountability; Professional; Contribution; Mistakes*

### **Introduction**

The concept of state has two meanings. The first is that it is a form of social organization with certain special characteristics that distinguish it from other forms of social organization in both primary

and secondary voluntary categories. Along with the development of the insurance industry in Indonesia, Law no. 40 of 2014 concerning Insurance as a replacement law for Law no. 2 of 1992 concerning Insurance Business. This change is a *multiple effect* of the emergence of the Financial Services Authority with Law no. 21 of 2011 concerning the Financial Services Authority, OJK carries out regulatory and supervisory duties on:

1. Financial services activities in the banking sector
2. Financial Services Activities in the Capital Markets Sector
3. Financial Services Activities in the Insurance sector, Pension Funds, Financing Institutions and other Financial Institutions

The attributive authority that is obtained by the Financial Services Authority in carrying out regulatory tasks is regulated in the provisions of article 8, namely to carry out regulatory tasks as referred to in article 6, namely:

1. Establish implementing regulations for this Law
2. Establish laws and regulations in the financial services sector
3. Establish OJK regulations and decisions
4. Establish regulations regarding supervision in the financial services sector
5. Establish policies regarding implementation of OJK duties
6. Establish regulations regarding procedures for issuing written orders against Financial Services Institutions and certain parties
7. Establish arrangements regarding procedures for determining statuer managers at Financial Services Institutions
8. Establish organizational and infrastructure structures, as well as manage, maintain and administer assets and liabilities and
9. Establish regulations regarding procedures for imposing sanctions in accordance with statutory provisions in the financial services sector

Based on the description above, the Financial Services Authority has a strong legal basis to issue a Financial Services Authority Regulation that is binding on Financial Services Institutions including Insurance Companies, including Insurance Brokerage Companies.

The existence of Insurance Broker Companies with Insurance Brokers as workers cannot be separated from the existence of Insurance Companies and part of the Insurance industry. its existence is expected to increase financial inclusion literacy which is still quite low related to public awareness of the need for insurance. As the results of research conducted by the Financial Services Authority in 2016 found that as much as 67.8% of the Indonesian people had used the services of financial institutions (Banks, BPRs, Pawnshops, Leasing, Multifinance, Insurance, Capital Markets and others), however, the number Only about 12.1% of people have purchased protection in the form of insurance. The low level of public literacy about insurance is almost certainly due to the limited understanding of the community about insurance which ultimately creates doubts and thoughts that insurance may not be a solution but a new problem for them.

The problem of limited understanding from the public about insurance issues is fundamental , which results in the need for the presence of a business entity as a counterweight whose existence concretely acts for and on behalf of the policyholder, the insured or the participant, namely an insurance brokerage company. It is hoped that the roles and functions of the insurance contract that occur can be carried out in a more balanced manner and the purpose of the contract can be achieved (the interests of the parties can be maintained).

The problems that often arise are related to:

1. Define levels and what types of risks, types of policies and insurance plans are appropriate
2. The policies provided by any insurance company are indeed able to meet the desired protection needs
3. Fill in the policy according to the policy guarantee according to what the policy buyer wants or not
4. What are the requirements or warranty policies that must be met so that when a risk occurs, the claim can go well
5. Insurance claims as a form of achievement of insurance contracts run well and fairly (*fairness*), so that all parties can receive rights in accordance with the agreed terms.

Insurance Brokerage Companies in this case specifically can be seen as a legal entity formed in order to meet the needs of the public who can assist them in purchasing insurance products and accompany them when starting the process of choosing a risk, selecting an insurance company and when a claim occurs. This business is very important for the community (the insured) who are unfamiliar with the terms and conditions of an insurance policy, while on the other hand the insurance company understands insurance problems very well.

The growing role of Insurance Brokerage Companies in other parts of the world is reflected in the description contained in *The future of commercial insurance broking* presented by The Chartered Insurance Institute (CII) Research Report in April 2017. In Indonesia alone there are 161 Insurance Brokerage Companies and 42 Reinsurance Brokerage Companies in the form of income of Rp. 12.02 trillion, which on average originate from the general insurance business segment, the rest of these numbers on average use direct business mechanisms (direct line). business) or use the services of an insurance agent. As of the end of January 2020, there were 203 Insurance Broker Companies consisting of 197 National Private Insurance Broker Companies, 6 (six) Joint Venture Insurance Broker Companies.

An Insurance Broker Company is described as an entity that is legally domiciled as a representative (*representation*) of policyholders, reflected in the roles and functions of an Insurance Brokerage Company which represents the activities of the insured in carrying out the process from pre-contract, contract to execution of the insurance contract in this case when insurance claim. Even though it remains in the corridor as a party outside the insurance contract.

The Insurance Law determines the legal form of Insurance Brokerage Companies, Reinsurance Brokerage Companies which must be in the form of Limited Liability Companies or Cooperatives, thereby following the provisions in Law no. 40 of 2007 concerning Limited Liability Companies and Law no. 25 of 1992 concerning Cooperatives.

The existence of an Insurance Broker Company in addition to being subject to the provisions stipulated in Law no. 40 of 2007 concerning Limited Liability Companies, also clearly have to follow the provisions of Law no. 40 of 2014 concerning Insurance and POJK provisions No. 70 /POJK.05/2016 of 2016 concerning Business Conduct of Insurance Brokerage Companies, Reinsurance Brokerage Companies, and Insurance Loss Appraisal Companies. In this POJK, parties related to insurance brokerage companies appear, including policyholders (insured, participants), insurance companies, insurance brokers and experts.

All of the parties mentioned above are always related in the form of legal relations, whether in the form of agreements (work agreements, chartering agreements, power of attorney agreements) or relationships that are formed due to laws (the presence of illegal acts). Whatever the form of the legal relationship, there will be legal consequences in the form of liability if the legal action taken results in a loss. The legal action referred to is in accordance with the functions and roles of the Insurance Broker Company, namely:

1. Consulting Function
2. Intermediary Function
3. Claim settlement handling function.

These three functions must be carried out by the Insurance Brokerage Company as a legal entity which is functionally carried out by the Insurance Broker as a professional worker. Insurance Broker is a person who works for an insurance brokerage company and meets the requirements to provide recommendations or represent policyholders, the insured, or participants in closing insurance or sharia insurance and/or settlement of claims. This means that to meet the criteria as an insurance broker, you must meet the following elements/criteria:

- a. Person;
- b. Work;
- c. In an Insurance Brokerage company;
- d. Meet the requirements;
- e. Has the authority to provide recommendations or represent policyholders, insured or participants;
- f. Specializing in insurance closing or claim settlement.

The consequence of the existence of insurance brokers with their authority, raises legal responsibility if there is a risk of lawsuits from the policyholder, namely with the existence of legal norms article 30 (3) of Law no. 40 of 2014 concerning Insurance as follows:

"Insurance Brokerage Companies and Reinsurance Brokerage Companies are responsible for the Actions of Insurance Brokers and Insurance Brokers who provide recommendations to policyholders regarding insurance coverage or reinsurance closure"

It can be seen that this legal norm adopts the principle of vicarious liability *which* is also regulated in the provisions of article 1367 BW. The existence of this norm requires the insurance brokerage company to be fully responsible (read; liable) for the actions and or legal actions of the insurance broker, including if there are errors and or omissions for their actions that cause losses to the policyholder which have implications for lawsuits and potential liability can be not infinite. This norm is contradictory to the concept of norms contained in the provisions of the Limited Liability Company Law regarding limited liability *and* will certainly be detrimental to the existence of an Insurance Brokerage Company and cause injustice. Therefore, to foster fairness, this research is needed to answer what is the concept of liability for the insurance broker profession that is fair for policyholders and insurance brokerage companies.

### **Research Methods**

This legal research was conducted to seek solutions to legal issues that arise by choosing normative legal research, namely research that is built on scientific discipline and the workings of normative legal science. The statutory approach (*statute approach*) is used in this study, namely in the form of research on regulations related to the Insurance Act, Financial Services Authority Regulations (POJK) concerning Insurance Brokerage Companies and also uses a conceptual approach (conceptual approach), an *approach* that trying to build a legal concept related to the existence of insurance brokerage companies, insurance brokers and accountability from professional actions carried out as a profession.

## Discussion

### 1. Insurance Broker as a profession in the Insurance Industry

An insurance broker is defined as a person who works for an Insurance Brokerage Company and fulfills the requirements to provide recommendations or represent policyholders, insureds, or participants in carrying out insurance or sharia insurance coverage and/or settlement of claims as referred to in Law Number 40 of 2014 concerning Insurance. in article 1 number 25:

"Insurance Broker is a person who works for an insurance brokerage company and fulfills the requirements to provide recommendations or represent Policyholders, Insureds, or Participants in carrying out insurance or sharia insurance coverage and/or settlement of claims"

This definition reflects that those classified as Insurance Brokers must meet the following elements:

1. *People*, the subject referred to by insurance brokers is the legal subject of people

*Working*, the person is meant to carry out activities in the form of doing something in the form of WORK, meaning doing an achievement. can be: a. deliver goods, b. do something in the form of services or expertise, c. do nothing in a passive state.

In a work agreement there must be a job that is agreed upon as the object of the agreement, which is one of the legal requirements of a work agreement. However, the type, scope of work is very diverse. However, the scope of work varies greatly. The Labor Law does not specify the meaning of work. This happens because if given an understanding or a certain limitation it will actually complicate the implementation and development of manpower, so that the work included in the agreement is sufficient to be written in general terms. This work is free according to the agreement between the worker and the company, as long as it does not conflict with laws and regulations, decency and public order.

2. *In an Insurance Brokerage Company*, where people work is an insurance brokerage company that carries out their duties and roles as based on statutory provisions and professional work contracts and in carrying out their activities the company follows the provisions stipulated in the Financial Services Authority Regulations.

3. *Meet the Requirements for provide recommendations or represent policyholders, insured or participants.*

The meaning of the diction "fulfills the requirements" is almost certain here is that a person as the subject of a legal relationship based on a work agreement, who does work in an insurance brokerage company (read; insurance broker) must fulfill and have the competency requirements as an insurance broker as regulated in the Decree of the Board Members. Commissioner Number 1/KADK.02/2020 concerning the Determination of the Application of the Indonesian National Qualifications Framework in the Insurance Sector. This decision specifically adopts and becomes a derivative of OJK Regulation No. 67/POJK.05/2016 concerning Licensing and Institutional Insurance, Sharia Insurance Companies, Reinsurance Companies and Sharia Reinsurance Companies, as well as POJK No. 68/POJK.06/2016 concerning Business and Institutional Licensing for Insurance Brokerage Companies, Reinsurance Brokerage Companies and Loss Appraisal Companies and Presidential Regulation Number 8 of 2012 concerning the Indonesian National Qualifications Framework dii letter E.

#### 4. In closing insurance or sharia insurance and or settlement of claims.

The scope of work referred to is that in carrying out their work insurance brokers must be in line with the duties, functions and roles of insurance brokerage companies in carrying out their corporate duties, namely the task of carrying out a series of insurance closing processes up to handling claim settlement.

In this case, Peter Maas explained the scope of the role of an insurance brokerage company (*insurance broker and or financial intermediary*):

- a. Information function, a traditional function of insurance brokers is to provide their clients with information and advice regarding the clients insurance needs*
- b. Market maker function, the intermediation process through which buyers are matched with insurers is complex and multidimensional, insurance brokers help customers to make intelligent insurance decisions.*
- c. Transformation function, insurance brokers often deal with cases where the scale or complexity of risk is not practical for coverage by a single insurer.*
- d. Reduction or participation cost, that participation cost is very important in understanding modern intermediaries and their new roles. According to these authors, participation costs included much more than simply the time involved in making financial decisions, but also understood to include acquiring and using expertise.*
- e. Service functions, closely connected with the reduction of participation costs are other service functions brokers provide their clients in helping them deal efficiently with the increasingly complex variety of financial instruments and markets, and finally*
- f. Consulting function, the future of the broker lies in consulting with tailor made solutions*

The seven elements above become complete when the element of wages is added so that the criteria for the category of legal relations based on employment relations are met. According to article 1 number 30, the Manpower Law, wages are the rights of workers/laborers who are received and expressed in the form of money or other forms as compensation from employers or employers to workers which are determined and paid in accordance with work agreements, agreements or laws and regulations, including allowances for workers and their families for work and/or services that have been or will be performed by workers.

The illustration above clarifies the status of an insurance broker's position as a profession in the insurance industry where in carrying out his work for an Insurance Brokerage company he must equip himself with the criteria of a profession, including regarding competencies obtained with a special Education mechanism and must meet the requirements certain competencies, become a member of the profession and adhere to professional behavior based on the values set out in the professional code of ethics.

What are the characteristics of a profession According to Isnanto, the characteristics of what is meant by a profession are as follows:

1. Various professions have special knowledge, usually in the form of expertise and skills possessed by undergoing education, training, and years of experience.
2. Have very high rules and moral standards because the perpetrators of what is a profession generally carry out their activities based on a professional code of ethics.
3. Serve the interests of society.
4. Every professional actor must put personal interests below the interests of society.
5. There is a special license to carry out what is a profession.

6. Every profession is always related to the interests of society such as humanity, safety, security, survival so that to carry out the profession there must be a special permit.

Professionals usually become members of what is meant by a profession.

Based on Isnanto's explanation of the characteristics of the profession, it can be seen that insurance brokers can be categorized as a profession in the insurance industry. Insurance brokers must have specialized knowledge and skills acquired through years of education, training, and experience. Apart from that, they also have to comply with a professional code of ethics which has very high rules and moral standards. Another feature of the profession is serving the public interest, which means that insurance brokers must prioritize the interests of society over their own interests. In addition, to be able to carry out the profession, insurance brokers also need special permits from the competent authorities. In the context of the insurance industry, insurance brokers are concerned with the interests of society in relation to humanity, safety, security and survival. Therefore, insurance brokers must carry out their duties with full responsibility and uphold the values of professionalism in order to provide the best service for the community. Thus, it can be concluded that insurance brokering is a profession that has characteristics such as having special knowledge, adhering to a professional code of ethics, serving the public interest, requiring special permits, and always dealing with the public interest.

## **2. The Difference between Insurance Broker Professions and Workers in the Concept of Law No. 13 of 2003 Concerning Manpower**

The concept of workers in Law no. 13 of 2003 is specified in 2 (two) definitions:

- Everyone who is able to do work to produce goods and/or services both to meet their own needs and those of the community, and
  - Everyone who works by receiving wages or other forms of compensation, as well
  - An employment agreement is an agreement made between a worker/laborer and an entrepreneur or employer that fulfills the working conditions, rights and obligations of the parties.
- So that the concept definition of Workers in this case can be interpreted as follows:

"Workers are people who are able to do work to produce a product/service that works by receiving wages or other forms of compensation based on work agreements made by workers/laborers with employers who fulfill the work conditions, rights and obligations agreed upon by the party"

The difference with the insurance brokerage profession, can be seen from the point of view of:

### **a. Worker Qualifications**

Workers referred to in Law no. 13 of 2003 does not provide a concrete classification so that the term worker is equated with the term laborer. Meanwhile, the term laborer cannot at all be used in the classification of work fields that must have certain qualifications and requirements to be called a profession. Along with the development of the industrial world, the concept of workers must begin to be grouped/classified, for example workers:

- 1) Labor, a term that emerged in this industrial era is a development of the term from slavery, defined as people who do work from employers by receiving wages. Generally working in the production sector (*manufacturing*)
- 2) Worker, this term appeared in the era of Law no. 13 of 2003 but also does not ignore the term rush, so workers/labourers are often written. People who work in the non-production sector (manufacture) may because they work in an office (official) or in the service sector

- 3) Professional worker, is a term for workers who work based on the obligation to have certain qualifications and fulfill certain requirements that are bound therein in addition to work agreements, provisions of laws and regulations as well as a code of ethics.

### **b. Contents of the Work Agreement**

Work agreements as the basis and source of an agreement/legal relationship between workers and employers/employers have a very specific form and are specifically regulated in statutory provisions as stipulated in Article 54 of Law no. 13 of 2003 so that this work agreement is referred to as an agreement that contains certain provisions that are specific/certain and prioritizes a balance of exchange of rights and obligations (proportional) so that this work agreement model is called *Proportional Contractus Sui Generis*.

So it is clear that the existence of different elements and or components that complement the provisions mentioned above will also have a different impact in terms of remuneration. The proportion referred to in the agreement is realized in the balanced exchange of rights and obligations. Obligations are referred to as the scope of work and rights are referred to as wages. Because the profession has qualifications above the generally accepted standard of workers, it is only natural that it results in different and higher remuneration consequences than ordinary workers.

### **3. Violation of the Insurance Broker Professional Code of Conduct**

The code of ethics must be seen as a norm or principle that is accepted by a certain group as the foundation for daily behavior in society and in the workplace. The aims and objectives are to regulate and provide a measure of the quality of professional implementation and to maintain the honor and good name of the profession and protect the interests of the public who use professional services in a professional manner. The Code of Ethics for members of the profession must be used as a medium for disciplining, coaching, controlling all members of the profession.

The forms of violations of the code of ethics that occur occur in 2 (two) big pictures:

- a. Violation of general principles, is a violation of law, whether private or public, which results in entering into legal responsibility that is included in the provisions regulated in general in statutory provisions, including the impact of *liability*;
- b. Violation of specific rules, is a specific violation of the provisions and or obligations and legal prohibitions contained explicitly in the code of ethics of both the insurance broker profession and the professional code of ethics of insurance brokerage companies which creates legal obligations both in the form of consequences of criminal acts and compensation. (*liability*).

There are at least 2 (two) types of sanctions for violating the code of ethics, namely:

- a. Moral sanction;
- b. Administrative sanctions (expelled from the organization).

The sanctions themselves are in the code of ethics, starting from the complaint process which is followed up and assessed by an honorary council or ethical commission formed to enforce the code of ethics.

While violations of the code of ethics by insurance brokers, it will not be enough if they are only of a moral and administrative nature. So it is appropriate that if the act originates from a violation of law, negligence and/or misapplication of civil law liability (claim) it is appropriate to do so against the perpetrator based on the principles that apply in Article 1365 BW, 1366 BW and 1367 BW and in



conjunction with Article 1339 BW about propriety. Ethical violations that have the effect of being liable must also fulfill the elements contained in the provisions of Article 1365 BW, namely ethical violations either caused by errors and or negligence that cause losses and between errors and or negligence with losses having direct causation and or losses to the party. -the injured party takes legal action by filing a lawsuit (request for compensation). This liability can be in the form of default (*contractual liability*) and or because the law is in the form of an unlawful act (*PMH*).

#### 4. The Concept of Accountability for the Profession of a Fair Insurance Broker

The definition of accountability is distinguished from the notion of responsibility. Responsibility means that a person must bear responsibility for all his actions for everything that is his responsibility and under his supervision. Responsibility means that someone has to bear a lawsuit caused by his actions that harm other people. According to Peter Mahmud Marzuki, liability (*ansprakelijkheid*) is a specific form of responsibility. The definition of liability refers to the position of a person or legal entity who is deemed to have to pay some form of compensation or compensation after a legal event or legal action. For example, a person or other legal entity for committing an unlawful act (*onrechtmatige daad*) causing loss to the other person or legal entity. The term liability is within the scope of private law.

The issue of accountability is one of the most important issues in dispute resolution. This is related to the dispute resolution mechanism as well as the form of responsibility that must be borne by one of the parties as a result of his actions that harm the other party. The use of the term accountability is a tendency among civil law experts, while criminal law experts prefer to use the term responsibility. Liability is a translation of the Dutch term *aansprakelijkheid* which is equivalent to the English term *liability*. Both *aansprakelijkheid* and *liability* are used to differentiate their meaning from the Dutch term *verantwoordelijkheid* and *responsibility* in English which are more frequently used in criminal law. The two terms are translated into Indonesian with the term responsibility.

Liability has relevance to the existence of lawsuits in the field of civil law, where certain parties (defendants) are required to bear the claims of other parties. Which lawsuit arose as a reaction to the losses suffered (the plaintiff) as a result of the actions of the defendant. The definition of loss as stated by Ridwan Khairandy, that:

The loss (*schade*) referred to here is the actual loss suffered by the creditor's property. The loss to the property occurred as a result of the debtor's negligence. For example, a contractor or construction service company that works on a project that does not comply with the RKS (work plan and requirements) causes the roof of the house to collapse, which in turn causes damage to the property owned by the creditor.

Regarding accountability, Purwahid Patrik said that: Talking about accountability, it is clear that someone has to bear responsibility for a lawsuit. If there is a lawsuit, it means that someone has suffered losses, ask that the loss be borne or accounted for by the person making the loss. In law, it means that there is a relationship between the person who is harmed and the person who makes the loss or the relationship between people who are located in the field of assets.

Referring to the opinion expressed by Purwahid Patrik, there are several main elements that need attention, namely:

- a. There is an element of loss suffered by the plaintiff. Loss is *the cause* or cause of a lawsuit by the party who feels aggrieved.
- b. The act of a person (the defendant) causes a loss.
- c. There is a lawsuit from the party who feels aggrieved. This lawsuit is intended to request that the losses suffered by the plaintiff be borne by the defendant as the party that caused the loss.

- d. In the sense put forward by Purwahid, responsibility does not question whether there is an element of fault. This means that whether the actions of the defendant which resulted in the loss were committed intentionally or due to negligence or lack of caution have not been questioned. What is important is that there are real facts about the actions and losses as well as lawsuits as a process of asking for responsibility.

Purwahid further stated that "responsibility in civil law is the protection of the rights of a person who asks the judge to return his rights that were harmed by a person who committed an unlawful act".

Almost in line with Purwahid, MA Moegni Djojodirdjo said that:

"The definition of the term liability to describe the existence of *aansprakelijkheid* is to put forward that because of accountability to a perpetrator of an unlawful act, the perpetrator must be responsible for his actions and because of this responsibility the perpetrator must be held accountable for his actions in the lawsuit filed before the court by the sufferer against the perpetrator".

*Aansprakelijkheid* is a teaching or theory to determine who should receive a lawsuit or who is responsible for an unlawful act or breach of contract (default) from an agreement. So in civil law, what is known as liability is based on default and liability on the basis of unlawful acts. Liability on the basis of default arises from a contractual relationship between a person and another person. Meanwhile, liability on the basis of unlawful acts is born from the legal actions of a person who causes harm to another person. So that the term liability is more appropriate to use in civil relations, everyone remains civilly liable for all engagements (legal relations) both those born from agreements and those born from laws.

Liability for unlawful acts that cause harm to other people, which obliges the wrong person to issue the loss to compensate for the loss is based on Article 1365 BW. The conditions for liability under Article 1365 BW include: 1. The act which causes the loss is unlawful (an unlawful act); 2. the loss arises as a result of the act (causal relationship); 3. The perpetrator is guilty (there is an element of guilt); 4. Norms that are violated have " *strekking* " (working power) to avoid losses (relativity).

What is meant by an unlawful act (arrest *Hoge Raad 31 January 1919, NJ 1919, 16, Lindenbaun v. Cohen case*) is "to do or not to do something that: (1) violates the rights of others; or (2) contrary to the legal obligations of the perpetrator; or (3) contrary to decency; (4) contrary to the precision that must be heeded in the traffic of society towards self and other people's goods. In this decision the four criteria for determining whether an act constitutes an unlawful act are interspersed and connected with the word "or" which means that: 1. This does not mean that the application of one criterion blocks the application of the other criteria, and 2. . . . it can be concluded that the application of one criterion alone is sufficient to qualify the act as 'unlawful'.

An unlawful act according to Anglo-Saxon law, which is referred to as a *tort*, is that each person acts at his own risk (*a man acts at his peril*). Therefore, he will be responsible if he has neglected his obligations (duty), so that the element of obligation is the main element for an unlawful act. Violation of this obligation only occurs if it is done with an element of intent (intentional) or an element of negligence (negligence), although in very limited cases it is also recognized that an act violates the law arising from an act without error (strict *liability*).

Article 1365 BW reads "any unlawful act that results in harm to another person obliges the person who caused the loss due to his fault to compensate for the loss". The element of error is contained in a clause that reads "a person whose fault caused the loss". Actually, this element of error follows the unlawful nature of an act, but in practice this is not always the case. It is not easy to determine whether the perpetrator has an element of guilt. The questions that arise when we face the perpetrator of an

unlawful act are: can the act be blamed on him; can he avoid the occurrence of the incident; did he act carelessly (carelessly) or did he even do it on purpose? In the event that these questions are answered positively, then the act can be held accountable to the perpetrator. From this description, it is usually said that Article 1365 BW contains the concept of liability based on fault (*schuldaansprakelijkheid*) or *liability based on fault*.

The system of proving the concept of liability based on the fault of incriminating the sufferer (victim) as the plaintiff. The plaintiff will only receive compensation if he succeeds in proving the existence of an element of guilt by the defendant. In addition, proof regarding the elements of a causal relationship (causal relationship) between the act and the loss of the sufferer (victim) is borne by the sufferer (victim) as the plaintiff. This is in accordance with the burden of proof system regulated in BW, namely Article 1865 BW (The proof system regulated in Article 1865 BW is also regulated similarly in Civil Procedure Code, namely Article 163 HIR or Article 283 RBg).

So to file a lawsuit using Article 1365 BW for civil cases or disputes faces a juridical obstacle, namely the burden of proving the element of guilt and the causal relationship carried out by the plaintiff. In civil cases (disputes) it is very difficult for the aggrieved party to explain scientifically or technically the existence of a causal relationship between the defendant's actions (which contain an element of error) and the occurrence of losses on the part of the defendant.

The BW system, in addition to using the concept of accountability based on fault (Article 1365 BW), also uses the concept of enhanced accountability (*verscherpe aansprakelijkheid*).

This sharpened concept of accountability includes two types, namely:

- a. Liability based on guilt with the burden of proof is reversed (*schuldaansprakelijk met omkering van de bewijslast*).

The plaintiff does not need to prove that the defendant was not careful enough, but on the contrary, the defendant, in order to avoid liability, is obliged to prove that he made enough efforts to be careful, so that he cannot be blamed.

The concept of accountability is contained in:

- Article 1367 paragraph (2) jo. paragraph (5) BW regarding the accountability of parents or guardians.
- Article 1368 BW regarding the liability of animal owners. The owner of the animal, or the person who uses it, is liable for damages caused by the animal to third parties. In this case to note:
  - (1) a person who is not the owner is only liable if he uses the animal for his own needs (the animal keeper is not liable, but the tenant or borrower of the animal is liable),
  - (2) if someone else is liable, it will negate the liability of the owner, and
  - (3) the owner or the person using it must prove, in order to avoid liability, that he has taken sufficient steps to prevent the loss from occurring (reversal of the burden of proof).
- b. Liability based on risk (*riskico-aansprakelijkheid*) This liability eliminates the conditions: unlawful nature and element of guilt. He is responsible, even though on his part there is absolutely no violation of the law or an element of error.

Professional liability (professional *liability*) is a civil liability based on direct civil liability (*strict liability*), or liability on the basis of an agreement/contract (*contractual liability*) from service providers for losses suffered by service users as a result of utilizing the services provided. he gave. The relationship

that occurs between service providers and service users is a contractual relationship. In this contractual relationship, it is possible that the achievements provided by the service provider are not measurable (business engagement or *inspanningsverbintenis*), but it is also possible that the achievements provided by the service provider can be measured (outcome engagement or *resultantverbintenis*). In line with Sidhartha, who stated that the types of services provided in the relationship between professional service providers and professional service users can be distinguished into 2 types of services, namely: services that are promised to produce something (*resultaatsverbintenis*) and services that are promised to try something (*inspanningsverbintenis*).

According to Komar Kantaatmadja, professional responsibility is legal responsibility *in* relation to professional services provided to clients. Professional liability can arise because professional service providers do not fulfill the agreements that have been agreed with clients (professional service users) or the negligence of the professional service providers which results in unlawful acts.

To determine whether an action violates professional responsibility which then has an impact on accountability, it is necessary to have clear indicators as a tool to limit liability. These indicators are not stipulated in law, but by professional associations or organizations. Professional associations or organizations that will determine service standards that must be provided to every user of professional services and every professional expert working in the profession must comply with them. The service standards provided by this profession are called professional standards. These professional standards are highly technical in nature, but can also be in the form of moral rules contained in a professional code of ethics. Even though it is only a professional code of ethics, it does not mean that the person with the profession is not burdened to follow it. If the professional association or organization is authoritative and solid, then the professional association or organization can apply organizational sanctions to members who violate the professional code of ethics. Sanctions given by professional associations or organizations are often more respected by members of these professional associations or organizations because they are directly related to the continuation of their work. This is because the organization may revoke the recommendation or fire the member who violates it, so that those who lose their professional license, then those concerned cannot get a job.

Basically the professional code of ethics as an indicator to measure professional actions that can result in the emergence of legal liability (administrative, criminal and civil) is designed to accommodate several ethical principles as follows:

- a. Public benefit ethics (utilitarianism *ethics*), namely every step/action that produces the greatest benefit for the public interest must be selected and used as the main motivation;
- b. Duty ethics, that is, every system must accommodate things that must be heeded without having to consider the consequences that might arise, in the form of general moral values that must be adhered to such as do not lie, do not steal, be honest, and so on. All these moral values will obviously always be right and must be implemented, even if in the end it will not result in any benefit for oneself;
- c. Ethics of truth (right *ethics*), namely a view that still considers it wrong to all kinds of actions that violate the basic values of morality. For example, plagiarism or piracy of other people's copyrights/works, whatever the reason, will still be considered wrong because it violates academic values and ethics;
- d. Ethics of excellence/virtue (virtue *ethics*), which is a perspective to distinguish good and wrong actions by looking at the basic characteristics (behavior) of the person doing it. A good/right action will generally come out of a person who has good character as well. The emphasis here is placed on the moral behavior of the individual, not on the rightness of the actions he does; And
- e. Environmentally conscious ethics (environmental *ethics*), namely an ethic that developed in the mid-20th century that invites people to think and act with the concept of a modern society that is

sensitive to its environmental conditions. The definition of environmental ethics here is no longer limited to the scope of its application referring to moral values for humanity alone, but is expanded to include other "*natural resources*" that also need to be protected, guarded and cared for such as flora, fauna and inanimate objects (*in-animate*) though.

In the context of liability based on the provisions of article 1367 BW, attention must be paid not only to paragraphs (1) to (4) but also to pay attention to the provisions contained in paragraph (5), so that a loss that creates liability) is not only borne by the company on the basis of the Vicarious Liability and Responded Superior doctrines as a whole, while the concept of a Limited Liability Company recognizes limited liability. Opinion John Roatright and Manuel Velasques on justice, namely:

- 1) Distributive justice (*distributive justice*), has the same meaning as the traditional pattern, where benefits and bundles must be shared fairly,
- 2) Retributive justice (*retributive justice*), related to the occurrence of mistakes, where the law or fines imposed on the guilty person must be fair,
- 3) Compensatory justice *also* concerns the mistakes made, but according to another aspect, namely people who have a moral obligation to provide compensation or compensation to other parties who are harmed,

This theory of justice is associated with the characteristics of responsibility in a limited liability company (PT) as contained in article 3 of the Limited Liability Company Law (UU PT) number 40 of 2007, so it appears that the principle of justice applies to all people who have nothing to do with a company, both PT organs. consisting of the General Meeting of Shareholders (GMS), the Board of Commissioners and Directors as well as stakeholders. Justice in question is if the organs of the PT have carried out their duties properly, namely in accordance with the articles of association that have been determined by the company, then if in the future the company suffers losses up to bankruptcy, then the three organs of the PT are only responsible for the amount of capital owned or shares paid up. . This is because the PT is a legal entity that has assets that are separate from that organ. However, if the PT organs in a company carry out their duties and obligations not in accordance with the Articles of Association that have been determined by the company, then the PT organs will be held responsible indefinitely or up to personal assets.

Based on the interpretation of the analogy and *argumentum acontrario* , in the case of an Insurance Broker as a professional worker in an Insurance Brokerage company, the norms governing this responsibility are regulated in article 30 (3) of Law number 40 of 2014 concerning Insurance "Insurance Brokerage Companies and Insurance Brokerage Companies are responsible for the actions of insurance brokers and reinsurance brokers who provide recommendations to policyholders regarding insurance coverage or reinsurance closure. It must be read and interpreted not in the context of absolute liability *which* is the responsibility of the company. Insurance Brokers must take responsibility in the event that it is proven:

- a. make mistakes or negligence that cause losses to the company
- b. Has carried out the management in good faith without prudence for the benefit and in accordance with the aims and objectives of the company
- c. has a conflict of interest, either directly or indirectly, over management actions that result in losses, and
- d. did not take action to prevent the loss from arising or continuing.

The application of the principle of good faith in carrying out their responsibilities is something that is absolute and if an error or negligence occurs that causes a loss, the insurance broker should be held responsible based on his professionalism (professional liability) by applying the principle of presumption

by liability ( *presumption by liability principles* ). reverse proof system. When it is proven that insurance brokers have contributed to carrying out actions that really break down in the case mentioned above, it is only appropriate to fulfill the justice of this profession's responsibility to be implemented with a liability based on contribution of fault *model*.

### **Conclusion**

As a profession that is required to act and act professionally with predetermined standards. A person who works as an Insurance Broker (a person who works at an Insurance Brokerage Company and meets the requirements to provide recommendations to policyholders) must carry out all of his actions in accordance with predetermined standard criteria. Both on the basis of regulations (legislation), competency standards, ethical behavior (code of conduct) to avoid potential mistakes, negligence that can result in losses for insurance brokerage companies and for other parties. With the competence possessed, a professional is required to be aware of the legal consequences of his actions. Based on the discussion, it can be seen that as a professional in his field who obtains authority and adequate financial compensation from the company, he is obliged to carry out his functions and duties based on work agreements, applicable laws and regulations and professional ethics. Losses caused by errors or negligence of professional actions will result in liability consequences. When liability arises from the policyholder to the insurance brokerage company, the insurance broker should have contributed in the event that there is a loss due to his actions by using the reverse verification mechanism as stipulated in article 1367 (5) BW and applying the principle of presumption of guilt to the insurance broker as a professional worker until there is evidence to the contrary. The application of the principle of liability-based contribution of *fault* can be used in realizing justice for all parties and it is hoped that with this principle this profession can be more careful and more professional.

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