

ABSTRAK

Asuransi merupakan instrumen yang memberikan perlindungan terhadap risiko kerugian yang mungkin terjadi di masa depan. Dalam praktiknya, proses klaim asuransi sering kali terdapat dinamika tersendiri, salah satunya adalah penerapan *release and discharge*. *Release and discharge* mensyaratkan agar tertanggung melepaskan hak untuk mengajukan tuntutan lebih lanjut terhadap penanggung setelah menerima pembayaran klaim. Penerapan sedemikian rupa dapat ditemukan pada proses klaim asuransi jiwa dan asuransi tanggung jawab pengangkut angkutan udara pada kasus kecelakaan Mandala Airlines RI 091 dan Lion Air JT 610. Metode penelitian yang digunakan pada penelitian ini adalah metode yuridis normatif. Adapun, data yang digunakan pada penelitian ini dikumpulkan melalui studi kepustakaan yang kemudian dianalisis dengan metode kualitatif berupa deskriptif analitis. Hasil dari penelitian ini menunjukkan bahwa belum terdapat pengaturan secara tegas dan jelas mengenai penerapan *release and discharge* di Indonesia. Adapun, penerapan *release and discharge* di Indonesia dan Amerika Serikat memiliki kesamaan penerapannya, yakni melalui perjanjian. Selain itu, penerapan *release and discharge* di Amerika Serikat memiliki kesamaan dengan penerapan *covenant not to sue* dan *release of claims agreement* sebagaimana pengaturannya dapat ditemukan di negara bagian Illinois, Texas, dan Florida. Selanjutnya, praktik penerapan *release and discharge* sebagai syarat klaim asuransi di Indonesia tergolong sebagai perjanjian baku lengkap dengan adanya penerapan klausula baku dan klausula eksonerasi yang merugikan pihak tertentu. Hal tersebut dikarenakan *release and discharge* disiapkan terlebih dahulu secara sepihak dan tidak terdapat kesempatan untuk menegosiasikan isi pengaturan dari perjanjian tersebut. Lebih lanjut, pada perjanjian tersebut terdapat pengaturan mengenai pengalihan tanggung jawab setelah disepakatinya ketentuan-ketentuan pada *release and discharge* sehingga berpotensi merugikan pihak-pihak tertentu.

Kata Kunci: *Release and discharge*, Asuransi, Perjanjian Baku, Klausula Eksonerasi

ABSTRACT

Insurance is an instrument that provides protection against the risk of potential future losses. In practice, the insurance claim process often involves its own dynamics, one of which is the application of release and discharge. Release and discharge requires the insured to waive the right to file further claims against the insurer after receiving payment for the claim. Such application can be found in life insurance and air carrier liability insurance claim processes in the cases of the Mandala Airlines RI 091 and Lion Air JT 610 accidents. The research method used in this study is a normative juridical method. The data utilized in this research were collected through literature study and analyzed using a qualitative method in the form of descriptive-analytical analysis. The results of this study indicate that there is currently no clear and explicit regulation regarding the application of release and discharge in Indonesia. Furthermore, the application of release and discharge in both Indonesia and the United States is similar in that it is executed through an

agreement. In addition, the implementation of release and discharge in the United States is comparable to the application of covenant not to sue and release of claims agreement, as regulated in the states of Illinois, Texas, and Florida. Moreover, the practice of applying release and discharge as a condition for insurance claims in Indonesia is categorized as a standard form contract, complete with the inclusion of standard clauses and exoneration clauses that may disadvantage certain parties. This is due to the fact that release and discharge is unilaterally prepared in advance, and there is no opportunity to negotiate the contents of the agreement. Furthermore, the agreement includes provisions concerning the transfer of liability after the terms of the release and discharge have been agreed upon, which may potentially harm certain parties.

Keywords: *Release and discharge, Insurance, Standardized Agreement, Exoneration Clause*