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Article 251 of the Kitab Undang-Undang Hukum Dagang is Related to the Principle of Utmost Good Faith

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ABSTRACT
Correct notification of the insurance object by the insured to the insurer in an insurance law is very important. The conditions for the validity of the insurance agreement are 1320 of the Kitab Undang-Undang Hukum Perdata, Article 250 of the Kitab Undang-Undang Hukum Dagang, and Article 251 of the Kitab Undang-Undang Hukum Dagang. So, Article 251 of the Kitab Undang-Undang Hukum Dagang is a condition for the validity of an insurance agreement. The author agrees to the Judge's Consideration and Dictum of the Constitutional Court of the Republic of Indonesia Number: 83/PUU-XXII/2024. The decision is in accordance with the principle of utmost good faith. However, Article 251 of the Kitab Undang-Undang Hukum Dagang is more related to the principle of utmost good faith, according to the author, in line with the opinion in the book Prof. H. Man Suparman Sastrawidjaja, S.H., S.U and Endang, S.H, namely through a change in the law, namely Article 251 of the Kitab Undang-Undang Hukum Dagang, changes are made in such a way that the act of rejecting claims based on Article 251 of the Kitab Undang-Undang Hukum Dagang must be tested against Article 1338 Paragraph (3) of the Kitab Undang-Undang Hukum Perdata (principle of good faith / utmost good faith). The research method in this paper is normative descriptive that provides data/overview by analyzing using legal principles, examining the systematics of laws and regulations.

Keywords: Insurance Law, Utmost Good Faith Principle, Article 251 KUHD.

I. Introduction

There is an adagium that mentions *sweet potato socieatas ibi ius* which means that where there is a society there is a law. Based on the opinion of Prof. Emeritus Dr. H. Lili Rasjidi, S.H., S.Sos., LL.M and Dr. Ida Bagus Wyasa Putra, S.H., M.H stated that the adagium gives a complete picture of the legal relationship with the community, namely (Lili Rasjidi & Ida Bagus Wyasa Putra, 2012):

a. "There is no society without law and there is no law without society;
b. The law is held by the community to govern their lives;
c. Laws are formed by, and enforced for society."

People's lives that continue to develop in various fields often face a risk. The risks faced by individuals, unincorporated business entities, and legal entities cause losses that are material and immaterial. Emy

ISSN [Online]: 2808-2923

Pangaribuan who quoted the opinion of David L. Bichlehaupt said (Sembiring, 2014): "The efforts that can be made by humans to overcome a risk are as follows:

a. Avoidance, avoidance, or *avoidance* is a way of dealing with risks. A person who moves away from a job, an object full of risks, means that he is trying to avoid the risk himself.
b. Prevention. By preventing, a risk may be overcome so that some undesirable consequences can be avoided.
c. Transfer. With this model, which is a way of transferring risk, it is conceived in the sense that a person who faces a risk asks others to accept that risk. Risk transfer is carried out by an agreement. Included in this sense is coverage (insurance).
d. Acceptance (*assumption or retention*). With this model, it means that a person has just surrendered to the risks that he will bear. This can happen, because if a risk faced by a person is not estimated to be so great or efforts to avoid, prevent, divert are calculated to be greater in profit, then people will face these risks.

Humans in overcoming risks who make efforts to transfer risks to other parties certainly need laws that regulate this. An insurance law was born to regulate everything regarding efforts to transfer risks to other parties in order to create order and order so as to improve people's lives. The state is present to protect its citizens in Article 1 Paragraph (3) of the Constitution of The State of The Republic Indonesia of The 1945 which contains: "The State of Indonesia is a state of law." Legal protection by the state to its citizens can be in the form of protection of human rights. Citizens give some of their rights to be regulated by the state in a social contract, but not all. *"The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions* (Keadaan alamiah memiliki hukum alamiah untuk mengaturnya, yang mewajibkan setiap orang: dan dan akal, yang merupakan hukum itu, mengajarkan kepada seluruh umat manusia, siapa pun yang mau berkonsultasi dengannya, bahwa karena semua sama dan independen, tidak seorangpun boleh membahayakan orang lain dalam kehidupan, kesehatan, kebebasan, atau kepemilikannya.) (Situmorang, 2025).

Correct notification of the insurance object by the insured to the insurer in an insurance law is very important. The advantage of this is that the Insurer is protected from the Insured's acts in bad faith, but the disadvantage is if the Insured does not know of the damage or disease in the insurance object. Correct notification of the insurance object by the Insured to the Insurer is regulated in Article 251 of the Kitab Undang Undang Hukum Dagang. However, whether Article 251 of the Kitab Undang Undang Hukum Dagang is in accordance with the principle of utmost *good faith* is something that needs to be examined so that there is a balanced legal protection between the Insurer and the Insured. Based on the title "Article 251 of the Kitab Undang Undang Hukum Dagang Related with the Principle of *Utmost Good Faith* in the Constitutional Court Decision Number: 83/PUU-XXII/2024", the author formulates the identification of the problem as follows:

a. What are the legal requirements for an insurance agreement in Indonesia?
b. How is the application of the principle of utmost *good faith* in Article 251 of the Kitab Undang Undang Hukum Dagang in the Constitutional Court Decision Number: 83/PUU-XXII/2024!.

II. Literature Review and Hypothesis Development

2.1. The Legal Nature of Insurance Contracts in Indonesia

The legal framework for insurance in Indonesia is uniquely bifurcated, drawing from both the *Kitab Undang-Undang Hukum Perdata* (Civil Code) and the *Kitab Undang-Undang Hukum Dagang* (Commercial Code/KUHD). Fundamentally, an insurance policy is a consensual agreement. Therefore, it must satisfy the

ISSN [Online]: 2808-2923

general requirements of a valid contract as stipulated in Article 1320 of the Civil Code: mutual consent, legal capacity, a specific subject matter, and a lawful cause. However, insurance law imposes additional "special" validity requirements. Article 250 of the KUHD emphasizes the existence of an insurable interest, while Article 251 of the KUHD focuses on the duty of disclosure. Scholars argue that insurance is a contract *uberrimae fidei*, distinguished from ordinary commercial contracts (*caveat emptor*) by the extreme imbalance of information between the insured and the insurer. The insurer relies almost entirely on the descriptions provided by the insured to assess the risk and determine the premium.

2.2. The Doctrine of Utmost Good Faith (Uberrimae Fidei)

The principle of *utmost good faith* is the bedrock of insurance law globally. While Article 1338(3) of the Civil Code mandates that all agreements be executed in "good faith" (*te goeder trouw*), insurance law demands a higher standard: "utmost" good faith. In the Indonesian context, this principle is implicitly codified in Article 251 of the KUHD, which requires the insured to disclose all known facts regarding the object of insurance. Any concealment or misrepresentation, even if made without fraudulent intent (innocent misrepresentation), technically renders the contract voidable. According to Prof. H. Man Suparman Sastrawidjaja, the application of Article 251 often creates a legal paradox. On one hand, it protects the insurer from adverse selection; on the other, it can be used as a "legal weapon" to reject claims based on minor or irrelevant non-disclosures that the insured may not have even realized were significant. This highlights the necessity of testing the "strictness" of Article 251 against the broader objective of fairness in contractual relations.

2.3. Critical Analysis of Article 251 KUHD: Voidability vs. Fairness

Article 251 of the KUHD states that any incorrect information or concealment of known facts by the insured—of such a nature that the insurer would not have entered into the contract under the same conditions had they known the truth—makes the insurance void. The historical interpretation of this article has been quite rigid. However, modern legal discourse, as noted by Emy Pangaribuan Simanjuntak, suggests that the "materiality" of the information must be the primary filter. The current legal trend in Indonesia is moving toward a more balanced protection. If an insured fails to disclose a fact that has no causal link to the loss occurred, the absolute voidance of the contract is increasingly seen as a violation of the principle of justice. This is where the integration of Article 1338(3) of the Civil Code becomes vital. The "good faith" of the insured must be weighed against the professional "due diligence" of the insurer. The insurer, as a professional entity, should not remain passive but has a duty to ask specific questions (the "inquiry test") to bridge the information gap.

2.4. Constitutional Court Decision No. 83/PUU-XXII/2024 and Legal Reorientation

The Constitutional Court Decision Number 83/PUU-XXII/2024 marks a significant milestone in the evolution of the *utmost good faith* principle in Indonesia. By challenging the constitutionality or the interpretative rigidity of Article 251, the Court has reinforced the idea that the law must not facilitate arbitrary claim rejections. As Samuel Situmorang (2025) argues, the state's presence in a *Rechtsstaat* (state of law) is to ensure that social contracts do not harm the weaker party. The Court's dictum suggests that Article 251 must be read in harmony with the principle of proportional justice. A claim rejection based on Article 251 is only justifiable if the non-disclosure was material and made with a degree of negligence or intent that fundamentally altered the risk profile. This aligns with the "corrective function" of good faith, ensuring that the insurer cannot hide behind a literal interpretation of the KUHD to avoid legitimate obligations.

ISSN [Online]: 2808-2923

2.5. Risk Transfer and Social Protection

From a socio-legal perspective, insurance is a mechanism of risk transfer. As Lili Rasjidi posits, law is formed by and for society to govern life's uncertainties. When an individual transfers risk to an insurer, they seek legal certainty. If Article 251 is applied too strictly without considering the insured's lack of expertise or the insurer's failure to investigate, the social function of insurance as a safety net is undermined. Therefore, the literature suggests that a "normative descriptive" approach to Article 251—one that evaluates the system of regulations as a whole—is necessary to ensure that the *utmost good faith* principle serves as a shield for both parties, rather than a sword for one.

III. Research Method

Descriptive research is intended to provide as accurate data as possible about people, circumstances or other symptoms (Soekanto, 2018). The processing of analysis and construction of normative legal research data is divided into interesting legal principles, examining the systematics of laws and regulations, research on the level of synchronization of laws and regulations, comparative law, and legal history (Soekanto, 2018). The research method in this paper is normative descriptive that provides data/overview by analyzing using legal principles, examining the systematics of laws and regulations.

IV. Result and Discussion

4.1. Conditions for the Validity of Insurance Agreements According to the Law in Indonesia

Insurance arises because of something related to something uncertain in human life. Humans want something about life, security of their property, and health. There are so many risks in human life, that humans expect that these risks can be transferred to other parties. This makes insurance a human need in the face of uncertainty. The definition of insurance is found in Article 246 of the Kitab Undang Undang Hukum Dagang which contains: "Insurance or coverage is an agreement, in which the insurer binds himself to the insured by obtaining a premium, to provide him with compensation for a loss, damage, or loss of expected profit, which may be suffered due to an uncertain event." Based on Article 246 of the Kitab Undang-Undang Hukum Dagang, Prof. Abdulkadir Muhammad, S.H outlined the elements of insurance, namely (Muhammad, 2002):

a. Parties
   1) The insurer: is obliged to bear the risk transferred to him and is entitled to premium payments.
   2) Insured: obliged to pay premiums and entitled to compensation if a loss arises for something insured.
b. Status of the parties
   1) The insurer must have the status of a legal entity company.
   2) The insured can be an individual, partnership, or legal entity.
c. Insurance objects
   The object of insurance can be an object, a right or interest attached to the object, and a sum of money called a premium or indemnity.
d. Insurance Events
   An insurance event is a *legal act* in the form of an agreement or free agreement between the insurer and the insured regarding the object of insurance, uncertain events (events) that threaten the insured object, and the conditions that apply in insurance.
e. Insurance Relationship
   The insurance relationship that occurs between the insurer and the insured is a legally bound relationship that arises due to consent or free agreement.

ISSN [Online]: 2808-2923

Article 1 Number 1 of Law Number 40 of 2014 concerning Insurance Contains: "Insurance is an agreement between two parties, namely the insurance company and the policyholder, which is the basis for the receipt of premiums by the insurance company in exchange for: a. providing reimbursement to the insured or policyholder for losses, damages, costs incurred, loss of profits, or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of an uncertain event; or b. provide a payment based on the death of the insured or a payment based on the insured's life with a benefit of which has been determined and/or based on the results of the management of the fund." The definition of Insurance in Law Number 40 of 2014 is better than the Kitab Undang-Undang Hukum Dagang. This is strengthened by the opinion of Mulhadi, S.H., M.Hum who stated that (Mulhadi, 2017): "The definition of insurance regulated in Law Number 40 of 2014 is clearly more perfect, where it explains the parties involved in the agreement (Insurance Company and Policyholder), explains that the insurance agreement is the basis for the receipt of premiums by the Insurance Company or the basis for the Insured (policyholder) to excel in paying premiums as an obligation for him, and with the premiums paid, it will then bind the Insurance Company to perform counter-achievements according to the type of insurance it takes, including in the form of:

a. Providing reimbursement (reimbursement) for losses, damages, costs incurred, lost profits, or legal liability to third parties.
b. The payment of a sum of money based on the death or life of the Insured"

The definition of insurance in these laws and regulations has significant differences and is more comprehensive in Article 1 Paragraph (1) of Law Number 40 of 2014 concerning Insurance. An agreement is a legal act that will give birth to legal consequences in the form of rights and obligations (Zubaidah, Rahmi, dkk, Maret 2022). The rights and obligations of the Insurer in laws and regulations are to receive premiums and provide compensation, while the rights and obligations of the Insured are to receive compensation and pay premiums. The insurance agreement is an aletoir agreement, and not commutative, the meaning is that from the insurer to provide compensation or a sum of money to the insured is reimbursed for an event that is not certain to occur (*onzeker voorval*), thus there is a time gap between the insured's achievement of paying premiums and his right to compensation from the insurer (Man Suparman Sastrawidjada, 2003). The rights and obligations of the Insurer and the Insured in an insurance have a time interval, because an event that is uncertain occurs which if it occurs gives the Insured the right to receive compensation has a time gap with the Insured's obligation to pay premiums.

Insurance is an agreement between the Insurer and the Insured and is made with a deed called a policy. The definition of an agreement is found in Article 1313 of the Kitab Undang-Undang Hukum Perdata which contains: "An agreement is an act in which one or more people bind themselves to one or more other people." The insurance agreement must be made in writing with a deed contained in Article 255 of the Kitab Undang-Undang Hukum Dagang Code which contains: "Coverage must be made in writing by deed, which is named the policy." However, the absence of a policy in an insurance agreement is not an absolute requirement because the insurance agreement is issued since there is an agreement between the Insurer and the Insured. Because if you pay attention to Article 257 of the Kitab Undang-Undang Hukum Dagang, it is clearly stated that the insurance agreement is formed at the time of the agreement between the Insurer and the Insured even though the policy has not been handed over by the Insurer to the Insured (Man Suparman Sastrawidjada, 2003).

The conditions for the validity of an agreement based on 1320 of the Kitab Undang-Undang Hukum Perdata are as follows: "In order for a valid agreement to occur, four conditions must be met:

a. the agreement of those who bind him;
b. the ability to make an alliance;
c. a certain subject matter;
d. a cause that is not forbidden."

ISSN [Online]: 2808-2923

Regarding the 4 conditions for the validity of an agreement according to 1320 of the Kitab Undang-Undang Hukum Perdata, it can be described as follows: (Situmorang S. , Desember 2022)

a. Agreed terms mean that the agreement is invalid if it occurs because:
   1) Error in Persona and Object (Error in Materia);
   2) there is physical and psychological coercion;
   3) There is a fraud.
b. Capable condition means that the agreement is invalid if the party making the agreement:
   1) immature (based on the Civil Code of 21 years, but there are differences regarding the age of maturity in some written regulations);
   2) under patronage (stupid, crazy, dark-eyed, extravagant);
   3) married woman (revoked based on SEMA 3 of 1963)
c. Certain conditions mean that the goods that are the object of the agreement are tradable goods, can be determined by type, can be calculated, existing goods, and goods that will exist except for inheritances that have not been opened.
d. The condition of halal cause means that the agreement must not be about something prohibited by law and must not violate public order and morality.

Because insurance is an agreement, the conditions of validity are subject to Article 1320 of the Kitab Undang-Undang Hukum Perdata. That in addition to the 1320 Kitab Undang-Undang Hukum Perdata, there are special conditions in insurance agreements based on the opinion of Mulhadi, S.H., M.Hum, which are as follows: "While the special conditions are regulated in Articles 250 and 251 of the Kitab Undang-Undang Hukum Dagang, thus, based on the articles of the Kitab Undang-Undang Hukum Perdata and the Kitab Undang-Undang Hukum Dagang, there are 6 (six) conditions for the validity of the insurance agreement, namely agreements; proficiency (authority); specific objects; halal reasons; there is an insurable interest and notice" (Mulhadi, 2017). The conditions for the validity of an insurance agreement according to Prof. Abdulkadir Muhammad, S.H are: "There are 4 conditions for the validity of an agreement, namely the agreement of the parties, the authority to act, certain objects, and halal causes. The conditions in the Kitab Undang-Undang Hukum Dagang are the obligation to notify as stipulated in Article 251 of the Kitab Undang-Undang Hukum Dagang" The conditions for the validity of an insurance agreement according to Prof. H. Man Suparman Sastrawidjaja, S.H., S.U and Endang, S.H are: "So for insurance agreements other than Article 1320 of the Civil Code, it is also supplemented with Article 251 of the Kitab Undang-Undang Hukum Dagang in determining its validity. Specifically regarding the conditions in sub c of Article 1320 of the Kitab Undang Undang Hukum Perdata regarding certain objects in the insurance agreement are the interests of the insured" (Man Suparman Sastrawidjada, 2003). Based on the opinion of Prof. Abdukadir Muhammad, S.H., Prof. H. Man Suparman Sastrawidjaja, S.H., S.U and Endang, S.H, as well as Mulhadi, S.H., M.Hum, it can be concluded that the conditions for the validity of the insurance agreement are 1320 Kitab Undang-Undang Hukum Perdata, 250 Kitab Undang-Undang Hukum Dagang (theory of interest), and 251 Kitab Undang-Undang Hukum Dagang (correct notification by the Insured to the Insurer regarding the object of insurance).

4.2. Application of the Principle of Good Faith in Article 251 of the Kitab Undang-Undang Hukum Dagang in the Constitutional Court Decision Number: 83/PUU-XXII/2024

Article 251 of the Kitab Undang-Undang Hukum Dagang reads: "All false or false notices, or all concealments of circumstances known to the insured, even if made in good faith, of such a nature that the agreement will not be concluded, or will not be entered into on the same terms, if the insurer knows the true circumstances of all such matters, render the insured void." Thus, Article 251 of the Kitab Undang-Undang Hukum Dagang distinguishes 3 things, namely (Man Suparman Sastrawidjada, 2003):

ISSN [Online]: 2808-2923

a. Providing incorrect information
b. Giving false information
c. Do not provide information about unknown things.

This refers to the fact that the insured knows the object of insurance, so the insured must make correct notice about the object of insurance. The insured who is in good faith must be protected by the applicable laws in Indonesia. In insurance law there is a theory about the correct notification of the object of insurance. There is a theory of objectivity, but it has advantages and disadvantages, namely (Muhammad, 2002):

a. Advantages: The Insurer is protected from the Insured's dishonest acts. On the contrary, the Insured is always motivated to be honest and always be careful to notify the nature of the insurance object to the Insurer.
b. Disadvantage: the inability of the Insured to know of any hidden defects inherent in the object of the insurance that may be used as a reason by the Insurer to declare the insurance void after an event, no matter how honest the Insured may be.

Article 251 of the Kitab Undang-Undang Hukum Dagang, which is a rule regarding correct notification by the insured to the insurer regarding the insurance object, is often used to harm the insured. This is not in accordance with the principle of *utmost good faith*. The good faith of the parties must be reflected when making an agreement and executing an agreement. Prof. Subekti stated:

a. Good faith when making an agreement is honesty, a person with good faith puts full trust in the opponent, who is considered honest and does not hide something bad in the future can cause difficulties (Subekti, 1976).
b. Good faith in the implementation of an agreement is propriety, that is, a good assessment of the actions of a party in terms of carrying out what is promised (Subekti, 1976).

The principle or principle of perfect good faith can be interpreted as that each party to an agreement to be agreed upon by law has the obligation to provide the most complete information or information, which can influence the other party to enter into an agreement or not, whether such information is requested or not (Mulhadi, 2017). In the insurance agreement, the insurer and the insured must make correct notices, namely:

a. The Insurer is obliged to properly notify the Insured in accordance with Article 31 Paragraph (2) of Law Number 40 of 2014 concerning Insurance which contains: "Insurance Agents, Insurance Brokers, Reinsurance Brokers, and Insurance Companies are obliged to provide true, non-false, and/or non-misleading information to the Policyholder, Insured, or Participant regarding the risks, benefits, liabilities and charges related to insurance products or products Sharia insurance offered." There are criminal sanctions against parties who provide false information to the insured as in Article 75 of Law Number 40 of 2014 concerning Insurance which contains: "Every Person who deliberately does not provide information or provides untrue, false, and/or misleading information to the Policyholder, Insured, or Participant as referred to in Article 31 paragraph (2) shall be sentenced to imprisonment for a maximum of 5 (five) years and a fine at most Rp5,000,000,000.00 (five billion rupiah)."
b. The Insured is obliged to notify the insured of a matter in accordance with Article 251 of the Kitab Undang-Undang Hukum Dagang.

Every agreement is built on the basis of trust between the parties. In an insurance agreement, mutual trust arises when the parties bind themselves to an insurance agreement. The insured believes that the insured will pay the policy and correctly notify the insurance object to the insurer and the insured believes that the

ISSN [Online]: 2808-2923

insurer will pay compensation in the event of an event. The principle of utmost *good faith* in Indonesian law is regulated in Article 1338 Paragraph (3) of the Kitab Undang-Undang Hukum Perdata which contains: "Consent must be carried out in good faith." Article 1338 Paragraph (3) of the the Kitab Undang-Undang Hukum Perdata is a counterbalance to the provisions of Article 1338 Paragraph (1) of the the Kitab Undang-Undang Hukum Perdata to provide protection to the weaker parties so that the position of the parties becomes balanced (Anzif, 2013). The unbalanced position between the insurer and the insured is balanced by the existence of a principle of good faith in insurance.

The concept of good faith, which is recognized by Article 1338 Paragraph (3) of the the Kitab Undang-Undang Hukum Perdata, is an ethical principle that plays a key role in maintaining justice and integrity in contractual relationships (Azhari Dwi Syafi'i, dkk, Juni 2024). The concept of good faith in an agreement is the basis of the motivation of the parties to enter into an agreement is honesty and good faith. The promises of the parties contained in an agreement must also be carried out with honesty and good faith at the time of the implementation of the agreement.

Article 251 of the Kitab Undang-Undang Hukum Dagang is more favorable to the Insurer than the Insured, so legal protection is needed for the Insured in overcoming this problem. There are several things that can overcome these problems, namely (Man Suparman Sastrawidjada, 2003):

a. Opposing Article 251 of the Kitab Undang-Undang Hukum Dagang against the principle of good faith Article 1338 paragraph (3) of the Civil Code at the time of the execution of the agreement
b. Through jurisprudence, it is hoped that the judge's decision in insurance disputes is based on the application of good faith at the time of the implementation of the insurance agreement
c. Through the amendment of the law, namely Article 251 of the Kitab Undang-Undang Hukum Dagang, changes were made in such a way that the act of rejecting claims based on Article 251 must be tested against Article 1338 (3) of the Kitab Undang-Undang Hukum Perdata.

The issue regarding Article 251 of the Kitab Undang-Undang Hukum Dagang must be tested with the principle of good faith so that there is legal protection for the Insured. Prior to the issuance of the Constitutional Court Decision of the Republic of Indonesia Number 83/PUU-XXII/2024, Article 251 of the Kitab Undang-Undang Hukum Dagang was often done things that were customary in practice. The breach of Article 251 of the Kitab Undang-Undang Hukum Dagang is among others by including the *renuntiatie clause* and the clause of knowing (*bekendheidsclausule*) (Muhammad, 2002). The insurance agreement that contains these clauses seems to be the basis for binding the parties. Insurance companies tend to protect their interests in such a way by stipulating a number of provisions that limit the rights of the insured so that the standard contract has the potential to become a biased clause (Selvi Harvia Santri, 2024). The inclusion of a deviation clause (*renuntiatie clausule*) and a knowing clause (*bekendheidsclausule*) in an insurance policy which is usually in the form of a standard agreement must not violate justice and harm the insured.

Some of the Legal Considerations of the Constitutional Court Decision of the Republic of Indonesia Number: 83/PUU-XXII/2024 are:

a. [3.18.2] That an insurance agreement is an agreement that has specificities that cannot be fully equated with agreements in general. The insurance agreement must meet certain principles that embody the nature or special characteristics of the insurance agreement itself, including the principle of insurable interest, the principle of indemnity, the principle of utmost good faith, and the principle of subrogation, all of which are essentially in line with Article 250, Article 251, Article 252, Article 253, and Article 284 of the Kitab Undang-Undang Hukum Dagang;
b. [3.18.3] That in order to protect the insurer and the insured on the basis of the principle of balance, it is also regulated that the insurer/insurance company acts in good faith and conveys correct information related to 457 with the insurance agreement or insurance policy.

ISSN [Online]: 2808-2923

c. [3.19] … That as the legal considerations above, good faith is the main condition in agreeing on the implementation of an insurance agreement, therefore it cannot be a justification reason, if then there are things that are known or found afterwards that are grounds for questioning the agreement that has been agreed, even canceling unilaterally.
d. [3.20] The affirmation of the norms of Article 251 of the Kitab Undang-Undang Hukum Dagang is necessary because the norm does not provide fair legal protection and certainty. Moreover, the norm of Article 251 of the Kitab Undang-Undang Hukum Dagang is a legal product of the Dutch colonial government that has been left behind so that it is not in accordance with the development of society and current legal needs.

Dictum The Constitutional Court Decision of the Republic of Indonesia Number: 83/PUU-XXII/2024 is as follows:

a. Granting the Applicant's application in part;
b. Declare that the norm of Article 251 of the Kitab Undang-Undang Hukum Dagang (Staatsblad of 1847 Number 23) is contrary to the Constitution of the Republic of Indonesia of 1945 and does not have conditionally binding legal force as long as it is not interpreted "including in relation to the cancellation of coverage must be based on the agreement of the insurer and the insured or based on a court decision";
c. Ordering the publication of this decision in the State Gazette of the Republic of Indonesia as appropriate;
d. Reject the Applicant's application for other and the rest.

The Judge's Consideration and Dictum of the Constitutional Court of the Republic of Indonesia Number: 83/PUU-XXII/2024 is agreed by the author because it is in accordance with the principle of utmost *good faith* in providing protection to the insured. However, regarding Article 251 of the Kitab Undang-Undang Hukum Dagang to be more related to the principle of utmost *good faith*, according to the author, it is in line with the opinion in the book of Prof. H. Man Suparman Sastrawidjaja, S.H., S.U and Endang, S.H, namely through changes to the law, namely Article 251 of the Kitab Undang-Undang Hukum Dagang, changes are made in such a way that the act of rejecting claims based on Article 251 of the Kitab Undang-Undang Hukum Dagang must be tested against Article 1338 Paragraph (3) of the Civil Code (principle of *utmost good faith*).

The jurisprudence regarding Article 251 of the WvK (KUHD) occurred in the Netherlands was decided by the Hoge Raad (H.R) on June 8, 1962 which is better known as *Tilkema's duin Arrest*. *Verzwijging van verdordelingen* has softened Article 251 of the WVK by stating that the agreement is null and void if the insured conceals information (*verzwijging*), but can only be canceled by the judge of the insurer's application in the event that the insured provides false or incorrect information (*verkeerde of ontwaarachtige opgave*) (Man Suparman Sastrawidjada, 2003). Based on *Tilkema's Arrest duin*, Article 251 of the WVK/KUHD must be interpreted as the cancellation of the insurance agreement because the insured informs that the information is not true must be proven and decided by the panel of judges in the trial. The insurer cannot immediately cancel the agreement that results in the insured being harmed on the basis of Article 251 of the Kitab Undang-Undang Hukum Dagang. It can also be interpreted that the good faith of the insured needs to be considered, then the Arrest H.R of June 8, 1962 also states, if the insurer does not ask, and the insured does not know and cannot be considered that he should know that the information not provided is important to the insurer, then if the insured does not notify the expected information, Article 251 of the Kitab Undang-Undang Hukum Dagang cannot be used by the insurer to reject the claim (Man Suparman Sastrawidjada, 2003). This opinion accommodates the weakness of Article 251 of the Kitab Undang-Undang Hukum Dagang so that it is not used arbitrarily by the insurer to cancel the insurance agreement that results in the insured's disadvantage.

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V. Conclusion

The validity of an insurance agreement in Indonesia is fundamentally rooted in a dual legal framework that requires the fulfillment of both general and specific criteria. This necessitates the satisfaction of the general contract requirements stipulated in Article 1320 of the Civil Code—comprising mutual consent, legal capacity, a specific subject matter, and a lawful cause—alongside the specialized requirements of the Commercial Code (KUHD), specifically Article 250 regarding insurable interest and Article 251 concerning the duty of disclosure. The application of these norms, particularly the principle of *utmost good faith* within Article 251, has been significantly refined by the Constitutional Court Decision Number 83/PUU-XXII/2024. In its legal considerations, the Court emphasized that good faith is the primary condition for the execution of an insurance agreement; thus, discovered facts after the agreement's inception cannot justify arbitrary unilateral cancellations. Consequently, the Court's dictum declared Article 251 KUHD conditionally unconstitutional unless it is interpreted to mean that any cancellation of coverage must be based on either mutual agreement between the insurer and the insured or a formal court decision.

The author concurs with this judicial stance, as it aligns with the core essence of *utmost good faith*, yet proposes a more integrated legislative approach. Following the scholarly opinion of Prof. H. Man Suparman Sastrawidjaja and Endang, the author argues that Article 251 KUHD should be formally amended to ensure that any rejection of insurance claims is strictly tested against the broader principle of good faith enshrined in Article 1338 Paragraph (3) of the Civil Code. Such a legislative evolution would ensure a balanced legal protection, preventing the rigid application of Article 251 from being misused by insurers to evade legitimate obligations, thereby upholding the integrity of the insurance contract as a fair risk-transfer mechanism.

References

Anzif, A. J. (2013). Hukum Asuransi Indonesia. Jakarta: Sinar Grafika. p. 61.

Azhari Dwi Syafi'i, dkk. (Juni 2024). Tanggung Jawab Hukum Perusahaan Asuransi Jiwa Terhadap Kegagalan Pembayaran Klaim Asuransi Jiwa Bakrie. Jurnal Panorama Hukum, 9 (1), 50. Retrieved from http://ejournal.unikama.ac.id/index.php/jph/article/view/9488/4651

Constitution of The State of The Republic Indonesia of The 1945

Kitab Undang-Undang Hukum Dagang

Kitab Undang-Undang Hukum Perdata

Law Number 40 of 2014 concerning Insurance

Lili Rasjidi & Ida Bagus Wyasa Putra. (2012). Hukum Sebagai Suatu Sistem. Jakarta: Fikahati Aneska, p. 146.

Man Suparman Sastrawidjada, E. (2003). Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian. Bandung: Alumni. p. 7.

Man Suparman Sastrawidjada, E. (2003). Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian. Bandung: Alumni. p. 27.

Man Suparman Sastrawidjada, E. (2003). Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian. Bandung: Alumni. p. 48.

Man Suparman Sastrawidjada, E. (2003). Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian. Bandung: Alumni. p. 30.

Man Suparman Sastrawidjada, E. (2003). Hukum Asuransi Perlindungan Tertanggung Asuransi Deposito, Usaha Perasuransian. Bandung: Alumni. p. 34-35.

Muhammad, A. (2002). Hukum Asuransi Indonesia. Bandung: Citra Aditya Bakti. p. 8-9.

Muhammad, A. (2002). Hukum Asuransi Indonesia. Bandung: Citra Aditya Bakti. p. 53.

Muhammad, A. (2002). Hukum Asuransi Indonesia. Bandung: Citra Aditya Bakti. p. 35.

Mulhadi. (2017). Dasar-Dasar Hukum Asuransi. Depok: RajaGrafindo Persada. p. 7-8.

Mulhadi. (2017). Dasar-Dasar Hukum Asuransi. Depok: RajaGrafindo Persada. p. 45.

Mulhadi. (2017). Dasar-Dasar Hukum Asuransi. Depok: RajaGrafindo Persada. p. 83.

ISSN [Online]: 2808-2923

Selvi Harvia Santri, S. Z. (2024). Penerapan Azas Keadilan Pada Perjanjian Asuransi Dalam Upaya Memberikan Perlindungan Hukum Terhadap Pemegang Polis. UIR Law, 8 (1), 24. Retrieved from https://garuda.kemdiktisaintek.go.id/documents/detail/4240245

Sembiring, S. (2014). Hukum Asuransi. Bandung: Nuansa Aulia. p. 3-4.

Situmorang, S. (Desember 2022). Syarat Sahnya Suatu Jual-Beli Online Pada Perjanjian/ Kontrak Elektronik Di Indonesia. Visi Sosial Humaniora, 3 (2), 184. Retrieved from https://ejournal.uhn.ac.id/index.php/humaniora/article/view/1115/710

Situmorang, T. P. (2025). Demokrasi dan Hak Asasi Manusia (Membangun Keadilan Sosial di Era Modern). Padang: Dunia Penerbit Buku. p. 13-14.

Soekanto, S. (2018). Pengantar Penelitian Hukum. Jakarta: Universitas Indonesia (UI-Press). p.10

Soekanto, S. (2018). Pengantar Penelitian Hukum. Jakarta: Universitas Indonesia (UI-Press). p. 252-263.

Subekti. (1976). Aspek-Aspek Hukum Perikatan Nasional. Bandung: Alumni. p. 26.

Subekti. (1976). Aspek-Aspek Hukum Perikatan Nasional. Bandung: Alumni. p. 27.

Zubaidah, Rahmi, dkk. (Maret 2022). Perlindungan Hukum Pemegang Polis Asuransi Jiwa Di Indonesia (Studi Kasus PT. Asuransi Jiwasraya). Jurnal Hukum dan Etika Kesehatan, 2 (7), 87. Retrieved from https://jhek.hangtuah.ac.id/index.php/jurnal/article/view/48/32