

Resolution of Insurance Disputes from Defective Consent After Constitutional Court Decision

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ABSTRACT

Human life is inseparable from concerns regarding the welfare of family members left behind after the death of the primary breadwinner. Insurance has become an integral part of modern human life, serving to maintain life balance and ensure the economic stability of families when the breadwinner passes away. The presence of life insurance is expected to provide financial protection so that the surviving family members may continue to live in adequate conditions. One of the fundamental principles in insurance law is the principle of utmost good faith. Therefore, consumers, in this case the insured, are required to disclose information fully and accurately. Failure to do so previously entitled the insurer to unilaterally cancel the insurance contract in accordance with Article 251 of the Commercial Code. However, the Constitutional Court of Indonesia, through Decision Number 83/PUU-XII/2024, declared that Article 251 of the Commercial Code is contrary to the 1945 Constitution of the Republic of Indonesia and therefore has no binding legal force. Accordingly, the legal issue examined in this study concerns how disputes arising from defects of consent committed by the insured should be resolved following the Constitutional Court Decision Number 83/PUU-XXII/2024. This research employs a normative legal research method. The study concludes that insurers may still cancel an insurance agreement if a defect of consent committed by the insured is proven, by filing a tort claim based on an unlawful act before the District Court.

Keywords: Insurance, Insurance Law, Defects of Consent, Constitutional Court Decision, *Commercial Code*

1. INTRODUCTION

In today's modern era, the need for personal protection and security has become crucial for individuals and their families. Insurance companies, acting as providers, exist to offer financial protection to those anxious about their and their families' well-being. This concern arises from the fear that their family will not have a decent standard of living if the breadwinner dies. Because of this concern, many potential customers are beginning to realize the importance of having an insurance policy, whether it be health insurance, critical illness insurance, or life insurance.

In Dutch, insurance is known as verzekering or assurance. Three perspectives attempt to explain the nature of insurance. The first perspective views insurance as a method for transferring or shifting risk (risk transfer). According to this view, insurance is a mechanism for purely transferring risk from the debtor or insured to the insurer. (Mulhadi, 2017: 27). The insured is an individual or business entity that receives protection from the insurer to overcome potential risks, while the insurer is an individual or business entity whose main business focus is to cover the



insured's risks and receive compensation.(A. Hasymi Ali, 1995 : 169)Prof. R. Soekardono explained that Verzenekeraar or the guarantor is the entity that bears the burden of risk, while Verzekeerde, known as the insured, is the party that transfers the risk related to assets or life to the guarantor. (Abdulkadir Muhammad, 2006: 7).

The second school, which refuses to consider the transfer aspect, focuses on the technical element. This view is expressed by Professors Mehr and Cammack, who view insurance as an effective social tool for mitigating risk by combining a number of units that can function adequately against risk, so that their individual losses are collectively predictable. These predicted losses are then borne equally by all individuals involved. Meanwhile, the third school is more of a combination of the two previous views. Professor Willet describes insurance as a social tool that aims to raise funds to face uncertain capital losses by transferring risk from a number of individuals to one person or group of people.(Mulhadi, 2017: 30 - 31). From these three schools of thought, it is clear that the definition of insurance depends on the perspective and the individual observing it. Professor Kulp states that insurance can be understood as a business, a profound branch of mathematics and statistics, or as a more general social method or technique.(A. Hasymi Ali, 1995 : 170).

Whether the first, second or third flow, when agreed between the Insurer and the Insured, which generally means that the Insured agrees to transfer his risk to the Insurer and the Insurer agrees to bear and/or be responsible for the insured's risk, then both parties will record this agreement in a document known as an insurance policy. An insurance policy is a contract agreed upon between two parties: the consumer, known as the insured, and the insurance company, known as the insurer, regarding premium payments. Based on this agreement, a contract is formed. According to Article 1233 of the Civil Code, every contract arises from a contract and a law. The term "law" in this article has both formal and material meanings, namely written regulations.(Lukman Santoso AZ, 2016).

Because an insurance policy is an agreement, the requirements for a valid insurance policy are the same as those for a valid contract. However, in accordance with Article 251 of the Commercial Code, there are additional requirements for a valid insurance agreement or policy: notification, which requires the insured to provide accurate and precise information to the insurer regarding the actual condition of the insured object. However, on June 12, 2024, a Judicial Review was filed against Article 251 of the Commercial Code by the Applicant named Maribati Duha by appointing Rendi Vlantino Rumapea, SH, MH, C.Med. and Eliadi Hulu, SH, MH as his legal counsel. The Applicant argued that Article 251 of the Commercial Code was not in line with the

principles of the rule of law as stipulated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which the researcher quoted as follows:

"Indonesia is a country based on law."

The Constitutional Court Judge in his decision stated that Article 251 of the Commercial Code is not in accordance with the 1945 Constitution and does not have binding legal force, as long as it is not interpreted "as relating to the cancellation of insurance which must be based on an agreement between the insurer and the insured or based on a court decision." In other words, after the Constitutional Court decision Number 83 / PUU-XXII / 2024 all types of policy cancellations must be based on an agreement between the insurer and the insured or a mutual agreement and / or based on a court decision. This is certainly a new norm in business law, particularly in the insurance sector. Sri Redjeki Hartono, in his book, "Insurance Law and Insurance Companies," argues that insurance contracts possess unique characteristics compared to other types of contracts. Several district court decisions frequently grant claims rejected by plaintiffs as insured against defendants as insurers.

2. RESEARCH METHOD

This type of research is normative, namely research that utilizes analysis of various regulations, court decisions, constitutional court decisions, supreme court decisions, agreements, or other legal documents. Soerjono Soekanto and Sri Mamuji define normative legal research as a form of legal research that is library-based, where this research is conducted by studying references or secondary data only. (Salim HS & Erlies Septiana Nurbani, 2013 : 12).

3. RESULTS AND DISCUSSION

Insurance Agreement as the Beginning of the Legal Relationship Between the Insurer and the Insured

A contract is an event in which one individual makes a commitment to another, or where two people mutually promise to do something. This event creates a relationship between the contracting parties, and this is called an obligation. An agreement is a legal relationship that exists between two people or two parties, where one party has the right to request something from the other party and the second party is said to be obliged to fulfill that request. (Subekti, 2004: 1). Book III of the Civil Code, which discusses contracts, explains that contracts (*verbinten*) have a very broad meaning, encompassing the concept of agreements. Book III also regulates legal

relationships that do not arise from an agreement or contract, namely contracts arising from unlawful acts (*onrechtmatige daad*) and contracts arising from managing the interests of others without consent (*zaakwaarneming*). However, the majority of the content in Book III focuses on contracts arising from an agreement or contract. Therefore, the core of this book is about contract law. (Subekti, 2003).

The definition of an agreement can be found in Article 1313 of the Civil Code, which states that an agreement is an action carried out by one or more people that binds themselves to one or more other people. (Mariam Darus Badruzaman, 1994) Mariam Darus Badruzaman argues that the definition in Article 1313 of the Civil Code (hereinafter referred to as the Civil Code) is too broad and incomplete. This is said to be incomplete because it only covers unilateral agreements. Meanwhile, it is said to be too broad because the definition can include various aspects such as a marriage promise, which is an act in family law that also results in an agreement.

In general, agreements don't always have to be in a specific form; they can be made verbally. If the agreement is written, the document can serve as evidence if a dispute arises after the agreement is made. (Neni Sri Imaniyati & Panji Adam Agus Putra, 2017 : 38).

An agreement can be considered valid if it fulfills the requirements for a valid agreement as stated in Article 1320 of the Civil Code, namely:

- 1) Agree to bind oneself;
- 2) Capable of making an agreement;
- 3) A certain thing;
- 4) A permissible cause.

The first two conditions are called subjective conditions because they address the subject of the agreement. The last two conditions are called objective conditions because they address the object of the agreement. By having an agreement to enter into an agreement, it means that the parties must have freedom of will for the parties or there must be no pressure that results in a disability in the realization of the will of the parties.

In practice, it often occurs that to formulate a particular agreement, one party has created a draft agreement for use by the other parties. This draft is designed so that upon signing, the parties only need to fill in some personal information, such as their identities and the date of the agreement, which was intentionally left blank beforehand. Meanwhile, the detailed terms and conditions are printed in full and, in essence, cannot be changed. This draft is known as a standard contract or standard agreement.

An insurance contract plays a crucial role in its function as a protection contract. It essentially provides coverage against the uncertainty of financial losses that may arise from an unforeseen event. The purpose of an insurance contract is to ensure a return to the financial situation that preceded the incident.

From this explanation, it can be understood that insurance is a way to identify and/or transfer various types of losses that may be faced in the future. Generally, this is done for the following reasons:

- 1) There are several significant and separate risks, but they can be combined;
- 2) An event that occurs consistently and can be calculated mathematically, with a relatively small margin of error. This allows us to estimate potential losses and calculate annual costs.(Mulhadi, 2017)

In essence, insurance or protection is a type of contract or agreement called a policy, which states that one party, known as the insurer, agrees, in exchange, to provide compensation known as a premium by paying an agreed amount of money to another party, the insured, to compensate for loss, damage, or injury to something of value. The insured person has an insurable interest, sometimes referred to as a risk, as a consequence of an event and also called a hazard or peril. This premium can be paid in a single payment or in installments, and the contract can be valid for a specific period or until an event occurs. The risk insured can be assets, property, wealth, profits, income, or human life.(A. Abdurrachman, 1991 : 544).

There are limitations to insurance agreements which are formally stated in Article 246 of the Commercial Code which states:

"Insurance or coverage is an agreement, by which an insurer binds himself to an insured, by receiving a premium, to provide compensation to him for a loss, damage or loss of expected profits, which he may suffer due to an uncertain event."

Based on the formulation of Article 246 of the Commercial Code, several elements can be drawn from an insurance agreement, namely:

- 1) There are two parties involved in insurance, namely the Insurer;
- 2) There is a transfer of risk from the Insured to the Insurer;
- 3) There is a premium that must be paid by the Insured to the Insurer;
- 4) The existence of uncertain event elements (evenemen; onzeker voorval; and
- 5) There is an element of compensation if an uncertain event occurs.



Valid Conditions for Insurance Agreements

In general, the conditions for a valid agreement are also the basic conditions for an insurance agreement. However, in an insurance agreement, there are two absolute conditions that make the agreement a valid insurance agreement:(Mulhadi, 2017):

- 1) The agreement between the insured and the insurer must be mutually agreed upon in the matters covered by the insurance. The agreement between the insured and the insuring party must be made independently, meaning without influence, pressure, or coercion from any party.
- 2) The parties involved in making an insurance agreement must have the capacity or permission to carry out legal actions. Persons who are ineligible to make an agreement or obligation as stated in Article 1330 of the Civil Code include:
 - a. Children who have not yet grown up;
 - b. Person placed under supervision;
 - c. Married women in cases regulated by law; and
 - d. All persons who are generally prohibited by law from entering into certain agreements.
- 3) Specific Objects

In an insurance contract, a specific object refers to the insured item, which consists of valuable assets and the interests attached to them, and includes both human life and physical aspects. The definition of a specific object in the context of insurance requires that the identity of the insured item be clearly and accurately established. This means that if the object in question is wealth, then information regarding its type, quantity, size, location, value, and other details must be clearly described. If the object is related to life or physical property, the complete identity must also be stated, including name, age, family relationships, address, and any medical history the insured has suffered.

- 4) Halal Reason

This means that the insurance agreement does not violate the law, does not conflict with public interests or moral values.

- 5) There is an Insurable Interest

This aligns with the principle of insurance, namely the principle of insured interest. Essentially, this fifth provision still relates to the insured object.

- 6) Announcement

The insured is fundamentally obligated to inform the insurer of the actual condition of the insured object. This obligation must be fulfilled when entering into an insurance



contract. If the insured neglects this obligation, the insurance may be deemed void as stipulated in Article 251 of the Commercial Code. However, following Constitutional Court Decision No. 83/PUU-XXII/2024, even if the insured is proven negligent, the insurer does not have the right to immediately cancel the insurance contract.

Settlement of Disputes Regarding Defects in Will in Insurance Agreements

There are various methods for resolving legal disputes in Indonesia. If the dispute is resolved outside the courts, it is known as non-litigation. Conversely, if it is resolved within the courts, it is called litigation. This aligns with regulations in the Consumer Protection Law, which divides consumer dispute resolution into two categories:

- (1). Out-of-court dispute resolution
 - a. Efforts to resolve disputes peacefully between the parties involved, both consumers and business actors/producers; and
 - b. Dispute resolution through the Consumer Dispute Resolution Agency which implements alternative dispute resolution methods, such as conciliation, mediation and arbitration;
- (2). Dispute resolution through the courts

Below we will explain the dispute resolution methods that can be carried out both outside the court and in the court if there is a defect in the will in the insurance agreement.

The first is Alternative Dispute Resolution (hereinafter referred to as ADR). This method is relatively new, but various forms of conflict resolution have long existed in society, essentially emphasizing the importance of deliberation to reach agreement.

Philip D. Botswick argues that ADR is a series of legal practices and techniques designed to enable the resolution of legal disputes outside the courts for the benefit of both parties, which also reduces costs or delays that might occur if the dispute were resolved through traditional litigation channels, as well as preventing legal issues from being brought to court. (H. Priyatna Abdurrasyid, 2002: 15).

Thus, ADR basically describes the intention of both parties to resolve existing problems through out-of-court methods.

Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Dispute Resolution provides an understanding of Alternative Dispute Resolution, namely:

"Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation or expert assessment."

Besides ADR, the second option is arbitration. Both ADR and arbitration are essentially out-of-court dispute resolution methods. Arbitration is implemented through an application to the Indonesian National Arbitration Board (BANI). Arbitration is a method of resolving civil disputes outside of a general court based on a written arbitration agreement between the disputing parties.

An arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.

The final result of arbitration is an arbitral award. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution states that the advantage of arbitration is that the arbitrator's decision is binding on the parties and can be enforced. Article 60 states that the arbitral award is final and binding on the parties.

In fact, although dispute resolution through arbitration is said to be a dispute resolution outside the court, logically speaking, the aim of dispute resolution outside the court is to reach an agreement, so it will refer to a form of dispute resolution through mediation or conciliation and not through arbitration because the final result of settlement through arbitration is a decision. (Ahmadi Miru & Sutarman Yodo, 2018: 232 - 233).

The third step is to file a conventional or regular civil lawsuit. If a defect in will is found, the insurer can file a civil lawsuit with the district court to cancel the insurance contract. Generally, this lawsuit concerns an unlawful act related to the defect in will committed by the insured, who is the defendant. Alternatively, a request to cancel the insurance contract can also be filed with the insurer as the applicant and the insured as the respondent. However, in practice, filing a civil lawsuit by the insurer is almost unheard of.

Prior to Constitutional Court Decision No. 83/PUU-XXII/2024, claim rejections were implemented by the insurer issuing a claim rejection letter. If the insured did not accept the insurer's decision, they would file a breach of contract lawsuit with the local District Court. According to the insured, every contract contains a number of promises or conditions that must be fulfilled by each party. These promises constitute obligations that must be carried out by the party making the promise and also constitute the right of the opposing party to demand fulfillment. These promises create legal obligations. If the promise is not fulfilled and results in a loss for the insured, the non-fulfillment of the agreement or breach of contract will give the insured the right to seek compensation.

In the context of buying and selling insurance products, Article 1504 of the Civil Code states that the seller has the primary responsibility to deliver the goods sold to the buyer and to

provide security. For the insurer, this security relates to hidden defects and third-party interference.(Janus Sidabalok, 2014). So, if it turns out that when the insured wants to submit an insurance claim and the insurer carries out a thorough check, it is then discovered that the insured has provided incorrect information regarding the actual conditions, then the insurer has the right to file a lawsuit for Unlawful Acts and the basis of defective will.

4. CONCLUSIONS

Based on the description provided by the author, the author concludes that the legal relationship between the insurer and the insured begins with the insurance contract. In principle, based on the principle of perfect good faith, the insured is obliged to inform the insurer of the true circumstances of their experience. Since the Constitutional Court Decision No. 83/PUU-XXII/2024, insurers can no longer unilaterally cancel insurance contracts, even if the insured ultimately discovers false information. However, the ruling provides a solution: policy cancellation must be by mutual agreement or a court decision.

The guarantor who receives the wrong information can file a lawsuit for unlawful acts in the District Court on the basis of defective will with Article 1365 of the Civil Code as the legal basis.

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