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Juridical Analysis of Insurance Agreements According to Civil Code and Insurance Law

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Abstract
Insurance agreements are a form of agreement that has special characteristics because it involves elements of risk transfer between the insurer and the insured. This research aims to analyze juridically insurance agreements according to the Civil Code (KUH-Percivil) and Law Number 40 of 2014 concerning Insurance. The research method used is normative legal research with a statutory approach and a conceptual approach. The data used are sourced from primary, secondary, and tertiary legal materials that are analyzed qualitatively. The results of the study show that insurance agreements according to the Civil Code are subject to the general provisions of the agreement as stipulated in Article 1320 of the Civil Code, as well as special provisions in the Commercial Law Code (KUHD). Meanwhile, the Insurance Law provides more comprehensive arrangements related to legal protection for parties, the principle of prudence, and supervision of insurance companies. Thus, insurance agreements must not only meet the legal requirements of the agreement according to the Civil Code, but also must comply with special provisions in the Insurance Law to ensure legal certainty and protection for the insured.

I. INTRODUCTION

The development of economic and social activities in modern society has encouraged the increase in various forms of risks that have the potential to cause losses, both to property and the safety of human lives. The complexity of economic activities, high community mobility, and the uncertainty of social and environmental conditions make risk an integral part of daily life. This condition raises the need for a protection mechanism that is able to provide legal certainty as well as economic guarantees for the community. One of the instruments that has a strategic role in managing and transferring these risks is insurance (Malik et al., 2025).

Insurance is essentially a legal relationship born from an agreement between the insurer and the insured. The insurer undertakes to provide compensation or certain payments in the event of an uncertain event, in exchange for the payment of premiums by the insured. This concept places insurance as a means of protection for certain objects from the threat of danger that can cause losses. The provisions of Article 246 of the Commercial Code (KUHD) define coverage as an agreement in which the insurer, by receiving a premium, provides compensation for losses, damages, or loss of profits expected due to an uncertain event. This understanding shows that insurance functions not only as an economic instrument, but also as a legal institution that has significant civil implications (Maisaroh et al., 2025).

From a civil law perspective, an insurance agreement cannot be separated from the general provisions regarding the agreement as stipulated in the Civil Code (KUHPerdata). Article 1320 of the Civil Code specifies four conditions for the validity of an agreement, namely the agreement of the parties, the ability to make an agreement, certain objects, and halal causes. These four conditions also apply in the insurance agreement, so non-fulfillment of one of the conditions can have implications for the nullity or nullity of the agreement. The application of this general provision confirms that the insurance agreement

is subject to the basic principles of the law of the agreement (Pratama & Rahmi, 2022).

The specificity of insurance agreements lies in the special characteristics regulated in the Criminal Code, including the principle of utmost good faith and the existence of insurable interest. The principle of good faith requires openness and honesty on the part of the parties, especially the insured, in disclosing the true circumstances of the insured object. Violations of this principle have the potential to lead to legal disputes, including cancellation of insurance policies. Insurable interests are also an essential condition that distinguishes an insurance agreement from other civil agreements (Fidhayanti, 2012).

The development of increasingly complex insurance practices has encouraged the state to establish Law Number 40 of 2014 concerning Insurance as a lex specialis that regulates insurance business activities comprehensively. This law is designed to provide stronger legal protections for policyholders, insureds, or participants, while realizing a healthy, transparent, and fair insurance system. These arrangements include aspects of licensing, supervision by the competent authorities, governance of insurance companies, and dispute resolution mechanisms (Jannah & Nugroho, 2019).

The practice of insurance agreements in the field still shows various recurring legal problems. The imbalance of bargaining positions between the insurer and the insured often puts the insured in a weak position, especially as a result of the use of standard clauses in insurance policies. These clauses are often drafted unilaterally by the insurer and have the potential to cause a detrimental interpretation to the insured. Differences in interpretation of the content of the policy, including regarding the rights and obligations of the parties, often lead to legal disputes, even unilateral cancellation of the policy (Wahyuni & Qadariyah, 2024).

Insurance policies have a very important position as perfect written evidence of the existence of a legal relationship between the insurer and the insured. The policy reflects the agreement of the parties as well as the basis for the birth of legally binding rights and obligations. In this context, the principle of freedom of contract as stipulated in Article 1338 of the Civil Code provides legitimacy that every agreement that is legally made is valid as a law for the parties who make it, cannot be canceled unilaterally, and must be implemented in good faith (Evri et al., 2024).

The application of the principle of freedom of contract in insurance agreements poses its own problems when faced with the practice of unilateral cancellation of policies by insurers. This action has the potential to contradict the provisions of Article 1338 paragraph (2) of the Civil Code which emphasizes that an agreement cannot be withdrawn other than by agreement of the parties or based on reasons justified by law. This phenomenon raises fundamental questions about the effectiveness of legal protection for the insured and the consistency of the application of treaty legal norms in insurance practices (Malik et al., 2025).

An in-depth juridical analysis of insurance agreements based on the provisions of the Civil Code and the Insurance Law is important to understand the legal position of insurance agreements, the conditions for their validity, and the legal implications that arise for insurers and insureds. The study is expected to make a theoretical contribution to the development of civil law science while providing a practical basis for the establishment of fair, balanced, and legal certainty-oriented insurance practices in Indonesia.

II. RESEARCH METHODS

This research is a normative legal research that aims to examine and analyze the legal norms that govern insurance agreements. The approaches used include the statute approach and the conceptual approach (Sonata, 2014). The legislative approach is carried out by examining relevant legal provisions, especially Article 1320 and Article 1338 of the Civil Code, the regulation of insurance agreements in the Commercial Code, and Law Number 40 of 2014 concerning Insurance. Conceptual approaches are used to study the legal foundations and concepts related to insurance agreements, such as the foundations of freedom of

contract, good faith, insurable interests, and the position of insurance policies.

The source of legal material consists of primary legal materials in the form of laws and regulations, secondary legal materials in the form of legal literature and scientific works, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The collection of legal materials is carried out through literature studies, while analysis is carried out qualitatively with prescriptive legal reasoning methods to draw conclusions about the legal position and legal implications of the insurance agreement for the parties.

III. RESULTS AND DISCUSSION

A. Validity of Insurance Agreements According to the Civil Code

The validity of an agreement, including an insurance agreement, basically rests on the provisions of Article 1320 of the Civil Code which stipulates four valid conditions of the agreement, namely the agreement of the parties, the ability to make an agreement, the existence of certain objects, and halal causes. This provision serves as a general basis for assessing the validity of any civil agreement. Insurance agreements as special agreements are still subject to these provisions, so that their fulfillment is the main prerequisite for the birth of a valid legal relationship between the insurer and the insured (Chumaida, 2013).

Problems arise in the requirements regarding certain objects, considering that the Civil Code does not provide a detailed description of the form and characteristics of the object of the agreement. This regulatory void has the potential to raise doubts in insurance practices, given that the clarity of the insured object is an essential element in determining the scope of coverage and the amount of risk transferred. The unclear object can have implications for legal uncertainty and open up opportunities for disputes between the parties (Saputra et al., 2021).

Affirmation of the clarity of the object of the insurance agreement is found in the provisions of Article 256 of the Criminal Code, especially the third number, which requires that the insurance policy contain a clear and detailed explanation of the object or goods insured. This provision shows that clarity of object is not just a formal requirement, but a substantial condition that determines the validity of an insurance agreement. The fulfillment of these provisions places the insurance agreement as an agreement that has legal certainty and binding force as stipulated in commercial law (Palyama, 2022).

The insurance agreement must also meet the special conditions set forth in Book I Chapter IX of the Criminal Code, which reflects the typical characteristics of the insurance agreement. These conditions include the principle of indemnity which limits compensation to the extent of actual loss, the principle of interest which requires the existence of a legal or economic relationship between the insured and the object of insured, the principle of perfect goodwill which demands the openness of the parties, and the principle of subrogation which gives the insurer the right to replace the position of the insured after payment of claims. The application of these principles strengthens the legitimacy and validity of insurance agreements in the civil law system (Dharma & Sawitri, 2025).

The regulation regarding the object of the insurance agreement also obtains certainty through Law Number 2 of 1992 concerning Insurance Business, especially Article 1 number 2, which provides broad limits on the coverage of insurance objects. These objects include objects and services, human souls and bodies, health, legal liabilities, and various other interests that have the potential to suffer losses, damages, losses, or depreciation. This provision clarifies the scope of the insurable object while removing doubts about the validity of the object of the insurance agreement (Alsakinah & Fasa, 2022).

Based on this description, the validity of insurance agreements according to the Civil Code cannot be separated from the special provisions in the Criminal Code and the insurance law. Although the Civil Code only regulates the legal terms of the agreement in general, clarity and certainty regarding the object of the insurance agreement have been comprehensively accommodated in the Criminal Code and the Insurance Business Law. The fulfillment of these general and special

provisions makes the insurance agreement legally valid, especially when viewed from the aspect of the object of the agreement and its characteristics as a special agreement.

B. Insurance Agreement According to Law Number 40 of 2014 concerning Insurance

Law Number 40 of 2014 concerning Insurance was established in response to the need for a more comprehensive insurance regulation that is relevant to the dynamics of economic development and the increasing complexity of risks in society. This law replaces Law Number 2 of 1992 with the main orientation on strengthening legal protection for policyholders, insureds, or participants, while encouraging the creation of a healthy, transparent, and fair insurance industry. Insurance agreements within this framework are placed as a central legal instrument that governs the relationship between the insurance company and the policyholder (Palyama, 2022).

Insurance agreements according to Law Number 40 of 2014 are still based on the general principles of treaty law as known in civil law, but obtain special arrangements as lex specialis. This law does not view insurance agreements solely as private agreements, but rather as legal relationships that contain dimensions of consumer protection and public interest. The juridical consequence of this approach is the restriction on the principle of freedom of contract in order to ensure a balance of positions between the parties and to prevent the abuse of a dominant position by insurance companies (Ruchiyat, 2020).

Article 1 of Law Number 40 of 2014 provides the definition of insurance as an agreement between an insurance company and a policyholder that is the basis for receiving premiums in exchange for providing compensation or certain payments due to uncertain events. This provision affirms the essential elements of the insurance agreement, including the presence of parties, risk transfer, premium payments, and the insurer's obligation to provide performance as agreed. The formulation clarifies the character of an insurance agreement as a reciprocal agreement based on risk management.

Protection of policyholders and insured is one of the main focuses in the Insurance Law. Insurance companies are required to convey true, clear, and non-misleading information about the insurance products offered. This obligation of transparency has direct implications for the validity of the will of the parties, especially in relation to the terms of the agreement as stipulated in Article 1320 of the Civil Code. Non-compliance with these obligations has the potential to cause a defect of will that can affect the validity of the insurance agreement (Gravionika & Subarkah, 2025).

Insurance agreements in practice are generally outlined in the form of insurance policies that contain standard clauses. Law Number 40 of 2014 provides restrictions on the use of standard clauses that have the potential to harm policyholders, in line with the principle of consumer protection. This restriction is intended to reduce the inequality of bargaining position between the insurer and the insured, while ensuring that the content of the policy reflects the balance of rights and obligations of the parties (Adi, 2025).

The regulation of insurance agreements in the Insurance Law is also closely related to the application of the prudential principle by insurance companies. This principle requires insurance companies to maintain financial health and good corporate governance to ensure the ability to fulfill obligations to the insured. The validity and effectiveness of an insurance agreement in this context is not only assessed from the formal aspect of the agreement, but also from the factual ability of the insurance company to carry out its achievements (Sam et al., 2022).

Supervision of the implementation of insurance agreements is carried out by the Financial Services Authority (OJK) which has the authority to regulate and supervise insurance business activities. This supervisory function aims to ensure the insurance company's compliance with the provisions of the law and provide effective legal protection for policyholders and insureds. The existence of the OJK strengthens the

state's position in ensuring certainty and fairness in the implementation of insurance agreements (Suratman & Junaidi, 2019).

Law Number 40 of 2014 also regulates the mechanism for resolving disputes arising from insurance agreements, both through non-litigation and litigation channels, in accordance with the agreement of the parties and applicable legal provisions. This arrangement provides a more flexible and efficient alternative dispute resolution, while ensuring access to justice for policyholders and insureds.

The regulation of insurance agreements in the Insurance Act shows a paradigm shift from a purely contractual approach to a legal protection approach oriented to a public interest-oriented approach. Insurance agreements are no longer seen as ordinary civil relationships, but rather as legal instruments that must ensure legal certainty, substantive justice, and a balance of rights and obligations of the parties. The legal basis built through Law Number 40 of 2014 makes insurance agreements juridically valid as well as functional in providing optimal legal protection for all parties involved.

C. Juridical Analysis of Legal Protection in Insurance Agreements

Legal protection in insurance agreements is an essential aspect considering the nature of the legal relationship between the insurance company and the insured in general showing an imbalance of bargaining positions. The insured or policyholder is often in a weaker position due to limited information, dependence on the products offered, and the dominant role of the insurance company in formulating the content of the agreement. The legal relationship in an insurance agreement is not only contractual, but also contains a consumer protection dimension, so it requires state intervention to ensure justice, legal certainty, and a balance of rights and obligations of the parties (Fairuzzen et al., 2024).

Juridically, legal protection in insurance agreements is rooted in the general provisions of treaty law as stipulated in the Civil Code. Article 1320 of the Civil Code stipulates the legal conditions of the agreement which also apply in the insurance agreement. The fulfillment of the terms of the agreement, competence, certain objects, and halal causes is the initial foundation of legal protection, because only a valid agreement is able to give birth to legally binding rights and obligations for the insurer and the insured. Legal protection is also strengthened by the principle of good faith as reflected in Article 1338 paragraph (3) of the Civil Code, which requires the parties to carry out the agreement honestly and responsibly (Gravionika & Subarkah, 2025).

Special provisions in the Commercial Law provide additional protection dimensions through the typical principles of insurance, such as the principle of utmost good faith, the principle of insurable interest, and the principle of indemnity. The principle of perfect good faith demands full disclosure of the condition of the object of insurance, thus preventing the concealment of facts that could be detrimental to one of the parties. The principle of insurable interest prevents speculative practices that are contrary to the purpose of the insurance, while the principle of indemnity ensures that the payment of claims does not exceed the actual loss suffered by the insured. The application of these principles serves as a juridical instrument to maintain fairness and prevent abuse of rights in insurance agreements (Sigalingging et al., 2022).

Legal protection for the insured is also reflected in the position of the insurance policy as written evidence that determines the scope of the rights and obligations of the parties. The insurance policy must contain clear, transparent, and non-misleading provisions. Ambiguity or ambiguity in the policy formulation has the potential to cause differences in interpretation that are detrimental to the insured and open up space for legal disputes. In this context, the principle of interpretation that benefits the weaker party becomes relevant as a legal protection measure for the insured (Rafika, 2022).

Law Number 40 of 2014 concerning Insurance strengthens legal protection in insurance agreements through preventive and repressive regulations. This law affirms the obligation of insurance companies to apply the principles of prudence, transparency, and good corporate

governance. The application of these principles aims to ensure the ability of insurance companies to meet claims payment obligations while preventing business practices that are detrimental to policyholders. Legal protection within this framework is not only realized through dispute resolution mechanisms, but also through supervision and coaching carried out by the competent authorities.

The use of standard clauses in insurance policies is an inevitable phenomenon in modern insurance practices, but it has the potential to cause an imbalance in the bargaining position between the insurer and the insured. Legal protection is necessary to limit the applicability of clauses that are burdensome or unilaterally eliminate the rights of the insured. The provisions in the Insurance Law and its implementing regulations function as an instrument of control over the content of insurance agreements, so that the principle of freedom of contract is not exercised absolutely, but is limited for the protection of weaker parties (Evri et al., 2024).

Legal protection in an insurance agreement also includes guarantees for the fulfillment of claims by insurance companies. The Insurance Law requires that insurance companies have adequate financial capabilities and maintain a certain level of solvency. This provision provides legal certainty and security for the insured that his right to claim payment is normatively protected. Disputes arising in the implementation of insurance agreements can be resolved through litigation or non-litigation mechanisms in accordance with the provisions of laws and regulations, so that the insured has fair and effective access to fight for his rights (Gravionika & Subarkah, 2025).

From a juridical perspective, legal protections in insurance agreements reflect a paradigm shift from absolute freedom of contract to substantive justice-oriented restrictions. The state through insurance regulations seeks to create a balance between the interests of insurance companies as business actors and the interests of the insured as consumers of financial services. The integration between general provisions of civil law, special provisions in the Criminal Code, and modern regulations in Law Number 40 of 2014 makes legal protection in insurance agreements more comprehensive, provides legal certainty, and guarantees the protection of the rights of the insured in insurance legal relations in Indonesia.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Insurance agreements as special agreements in civil law are still subject to general provisions regarding the validity of agreements as stipulated in Article 1320 of the Civil Code. The validity of insurance agreements is strengthened through special provisions in the Criminal Code that emphasize the clarity of the object of coverage and the application of the typical principles of insurance, such as perfect good faith, insurable interests, and the principle of indemnity. The development of insurance law through Law Number 40 of 2014 shows that there is an expansion of the function of insurance agreements from a purely contractual relationship to an instrument of legal protection for policyholders and insureds. The regulation limits the principle of freedom of contract in order to create a balance of rights and obligations of the parties and provide legal certainty in the implementation of insurance agreements. Legal protection in insurance agreements is realized through the regulation of clarity of policy content, limitation of standard adverse clauses, the application of the principle of prudence, and the mechanism of supervision and dispute resolution. The integration between the Civil Code, the Criminal Code, and the Insurance Law makes insurance agreements juridically valid while also functioning effectively as a means of fair and equitable risk management in society.

B. Suggestion

It is necessary to strengthen supervision of the application of standard clauses in insurance policies to prevent an imbalance in the bargaining position between the insurer and the insured. Increasing information transparency and legal education for policyholders also needs to be optimized so that insured understands their rights and obligations in full. Consistent improvement of regulations and law enforcement is expected to

increase public trust in the insurance industry and ensure effective legal protection.

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