



Implication of the Judicial Review on Article 251 of the Indonesian Commercial Code: How Will It Impact Insurance Companies in Indonesia?

On 3 January 2025, the Indonesian Constitutional Court has granted the petition to amend the provision of Article 251 of the Indonesian Commercial Code (Kitab Undang-Undang Hukum Dagang - “KUHD”). The judicial review petition was registered under case number 83/PUU-XXII/2024 on 12 June 2024 and concluded on 3 January 2025 (“Judicial Review”).

Essentially, the Judicial Review stipulates that the provision of Article 251 KUHD which conveyed that an insurance agreement may be annulled if there exists a false or inaccurate information which provided or hidden by the insured, contravenes the 1945 Constitution of the Republic of Indonesia, unless it is interpreted that the annulment of insurance agreement must be based on the approval of the insured and insurer party or based on court decision.

Among others, the Judicial Review provides certain clarity and certainty on the often-argued provision and/or doctrine relating to the annulment of insurance agreement which is often implemented based on Article 251 KUHD.

Annulment of Insurance Agreement based on Article 251 KUHD before the Judicial Review Decision

In essence, Article 251 KUHD stipulates that in drawing up an insurance agreement, the insured party is obligated to provide accurate and true information beforehand to the insurer party before entering into an insurance agreement, reads as follows:

“Every incorrect or false notice, or every concealment of facts known by the insured party, even though made in good faith, the nature of which is such that the agreement concerned would not have been made, or would not have been made under the same conditions if the insuring party learnt the factual situation of

all these matters, shall render the insurance concerned void.” [Unofficial Translation]

Additionally, Article 251 KUHD is also the legal basis for the principle of utmost good faith, which is widely known in insurance practice. Generally, in insurance law, there are 4 (four) principles, of insurance, namely :

1. Insurable interest principle;
2. Indemnity principle;
3. Trustful principle
4. Utmost good faith principle

The principle of utmost good faith is related to Articles 1320, 1321, 1323, 1328 and 1338 of the Indonesian Civil Code and Article 251 KUHD. What is meant by good faith in Article 1338 paragraph (3) of the Indonesian Civil Code is that the agreement must be implemented in a proper and appropriate manner. Good faith must not only exist at the time of the implementation of the agreement, but also at the time of making or signing an agreement. In order for this principle of good faith to be truly fulfilled, it is highly desirable for the insured party not to abuse the trust that has been given by the insurer. The insurer must also act in good faith by explaining the extent of the insurance given and the rights of the insured.

The trust of the insurer must be balanced with the good faith of the insured, namely by providing information and data known to him on the interest that will be closed insurance. This good faith is not only on the part of the insured but must also exist on the part of the insurer, because the one who knows more about the extent of the guarantee and the rights of the insured is the insurer. Therefore, when the insurance is closed, the insurer must also explain the extent of the guarantee and the rights of the insured.

Based on the Judicial Review, the petitioner alleged that Article 251 KUHD is very unfair because it only burdens the insured. The petitioner argued that both the insured and the insurer should have an equal position in the insurance agreement. Based on Article 251 KUHD, in addition to the insured being obliged to disclose material facts that should be notified to the insurer, the insurer should also be obliged to provide notification/information relating to the certainty of compensation guarantees and rejection of claims that befall the object of insurance in the event of an incident. If the insurer considers something about the object to be insured is important, the insurer must request and ask specific questions and information about such object to be insured.

Previously, within the process of the annulment of insurance agreement based on the provisions of Article 251 KUHD, there were no provisions or expressly specified regulation for the mechanism of void conditions or the method of annulment that could be carried out by both parties in the event that there are facts hidden by the insurer in entering into the insurance agreement. This certainly creates a lot of problems between the insurance company and the insured, where the insurance company is able to cancel the insurance agreement on the basis that the insured party has provided false or incorrect information about

his health before entering into the insurance agreement. This annulment is often seen by the insured party as an arbitrary action, where the insured party feels cheated since they have made premium payments, but the insurance agreement can be annulled when the insured party submits a claim.

Problems related to the annulment of insurance agreement based on Article 251 KUHD can be seen in several court decisions in Indonesia, among others, is the Supreme Court Decision No. 930K/Pdt/2019 between Ms. Efi Yusliana, as the insured party and Plaintiff against PT Asuransi Jiwa Manulife as the insurer party and Defendant. In this court decision, the insured registered herself as a Life Insurance member in PT Asuransi Jiwa Manulife through an official agent, based on an insurance agreement as stipulated in the insurance policy. As time goes by, the insured party filed an insurance claim for in-patient and out-patient treatments she had undergone, however the insurer, PT Asuransi Jiwa Manulife refused to pay the claim and unilaterally annulled the insurance agreement without prior notice. In this case, PT Asuransi Jiwa Manulife argued that Ms. Efi Yusliana had not provided accurate information in filling out her Life Insurance Application Form (SPAJ), which was part of the requirements for issuing the policy.

Implication after the enactment of the Judicial Review

After the Constitutional Court granted the petition against Article 251 KUHD as stipulated under the Judicial Review, the Constitutional Court decision upon Article 251 KUHD is as cited below:

“Declare that the provision of Article 251 of the Indonesian Commercial Code (Staatsblad of 1847 Number 23) contravenes with the 1945 Constitution of the Republic of Indonesia and has no conditional binding legal force insofar that it is not interpreted, including in relation to the annulment of insurance agreement which must be based on the agreement between the insurer and the insured or based on a court decision.”
[Unofficial Translation]

Based on the above decision, it is known that the annulment of insurance agreement which are based on a false/inaccurate information provided by the insured party is no longer allowed. Going forward, the annulment of insurance agreement must be based on the agreement between both parties or it must obtain a court decision beforehand. As such, the insurer (i.e. Insurance Companies) are no longer allowed to annul the insurance agreement before obtaining an approval from the insured party or the court decision.

After the enactment of the Judicial Review, one of many things that insurance companies would have to ensure, is the accuracy and truthfulness of the information provided by prospective customer/insured parties. Considering that Article 251 KUHD has been declared as conditionally unconstitutional, therefore the maximum principle of utmost good faith must be disturbed and such matter may also lead to more fraud cases within the process of insurance claim application.

Although the principle of utmost good faith as stipulated under Article 251 KUHD might be violated, insurance companies should prepare mitigation steps in order to keep providing high quality services while ensuring the integrity of the information obtained by customers.

Key Takeaways

Based on the foregoing, it can be concluded that the Constitutional Court of Indonesia has essentially amended Article 251 KUHD by declaring it conditionally unconstitutional in the Judicial Review. Before the enactment of the Judicial Review, Article 251 KUHD allowed insurers to annul insurance agreements unilaterally if it can be proven that the insured party had provided false or inaccurate information. However, after the enactment of the Judicial Review, insurance companies can no longer unilaterally annul insurance agreement on alleged misrepresentation or nondisclosure by the insured parties. Instead, insurance agreement can only be annulled by the mutual agreement between the insurer and the insured or through a court decision.

The enactment of the Judicial Review itself brings a lot of challenges and implications to insurance companies, one of them may cause insurers to enhance due diligence processes in order to verify the accuracy and completeness of information provided by customers. Further, it may also disrupt the principle of utmost good faith in insurance law, potentially increasing risks of fraudulent claims by insured parties. As such, insurance companies must strengthen their mitigation measures, such as improved customer education, stronger data verification, and detailed disclosures, are critical to uphold service quality and minimize fraud.

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