

Validity Of Electronic Policies In Insurance Agreements Based On The Provisions Of The Insurance Law

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Abstract. The policy serves as documented proof of an agreement between the policyholder and the insurer. According to Article 255 of the Civil Code, a written policy is a fundamental requirement for forming an insurance agreement. Despite this, some unit-link insurance companies in Indonesia offer electronic policies. Although there is no clear legal framework for electronic policies, these companies use them as proof of agreement. To avoid future legal issues, regulations clarifying the validity of electronic policies are necessary. This study aims to analyze the validity of electronic policies in unit-link insurance agreements in Indonesia. The normative legal research method is employed, utilizing secondary data from primary, secondary, and tertiary legal sources. However, the validity of an electronic policy may be questioned under Article 1320 of the Civil Code, which requires agreements to meet specific legal requirements, including being in written form, potentially rendering electronic policies invalid.

Keywords: Agreement, E-policy, insurance agreement

1 Introduction

In human life, whether we realize it or not, we definitely face risks. Risk can come from various unexpected things. How much risk the person concerned will face, really depends on the activities carried out. Likewise, in the business sector, it is almost certain that no business is free from risk, for example a business fire, business managers or employees having an accident or possibly even dying.

It could be that some of these risks have predictable causes. For this reason, how to prevent this risk from occurring as far as possible is well prepared. However, there are also some risks whose causes are unexpected, they just suddenly appear. The consequences of these events can cause losses, both material and immaterial, for example loss of a loved one or someone who is the backbone of the family in earning a living, loss of property. This loss often creates new problems for the party experiencing the disaster. For example, the risks faced by a company, both at the start and during the running of the company, show possible risks that will be faced, for this reason, initial efforts are needed to anticipate various risks that may occur in running the business.

A risk that is transferred to another party economically has a very important meaning. This means that if someone for some reason suffers a loss then he does not just fall. With the help of a party who is willing to take over the risk, that person can stand up again and be able to do it.

Easily start your business again. Another party who wants to take over the risk of loss is the insurance company. Insurance is no longer solely a protection institution or providing protection for insurance objects, but also as an investment vehicle, especially for insurance of sums of money.

Insurance regulations are contained in the Civil Code Article 1774, Commercial Code Article 246 and Law Number 40 of 2014 concerning Insurance Business. Article 1774 of the Civil Code states:

“A chance agreement is an action whose outcome, regarding the benefits and losses, both for all parties and for some parties depends on an uncertain event. These are insurance agreements, interest during one's life (living interest), gambling and betting.”

Article 246 of the Commercial Code explains the definition of insurance:

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

Article 1 number 1 of Law Number 40 of 2014 concerning Insurance Business explains the definition of insurance:

"An agreement between two or more parties, by which the insurer binds itself to the insured by accepting insurance premiums, to provide compensation to the insured, due to loss, damage or loss of profits expected or borne legal responsibility to a third party that the insured may suffer, arising from an uncertain event, or to provide a payment based on the death or life of an insured person."

Insurance objectives according to Law No. 40 of 2014 concerning insurance businesses as risk transfer institutions, which are developed to include social objectives and economic objectives. Social objectives include the welfare of the people, including members' welfare and social security, and economic objectives include risk transfer and compensation for losses. Insurance exists to provide a guarantee of protection for a person in order to anticipate themselves from events beyond human expectations.[1]

The concept of insurance as a risk transfer institution provides protection against losses from concerns about uncertainty. Uncertainty about losses occurs a lot in human life. Losses occur in the form of events or happenings which are referred to as events in insurance. The event must be covered in the policy. Events are an absolute requirement for submitting an insurance claim to obtain compensation or compensation for losses. The classification of insurance that covers losses experienced by a person is called loss insurance in Dutch, namely schade verzekering, where the object of insurance is an object, while insurance that covers the protection of human life is called life insurance in Dutch it is called sommen verzekering.

The occurrence of insurance is preceded by an agreement. Insurance agreements are stated in written form called a policy. Policies in insurance agreements have their own characteristics when compared to agreements in general. In the Policy, several words or sentences are deliberately italicized or bolded. In the insurance business the letterpress is intended has

meaning and it could be that the letter trumps the other statements. This may be stated in a policy.

The very rapid development of the era of globalization has facilitated access to public networks, both in transferring data and in accessing various information or in carrying out transactions such as entering into agreements. This development occurred in an insurance business that utilized electronic policies in making agreements.

In making an agreement, Article 1313 of the Civil Code provides a definition of an agreement, it does not have to be in writing. Regarding Article 1313 of the Civil Code, it only states that an agreement is an act by which one or more people bind themselves to one or more other people. Because insurance is a form of agreement in the Civil Code and Commercial Code. contained in Article 255 of the Commercial Code (KUHD) states that:

“Insurance must be carried out in writing with a deed, which is given the name of the policy. (KUHD 256.)”.

In this article it is explained that the policy must be made in writing, as it is known that with the development of existing technology, the need for fast and easy electronic transactions is very much needed. With this convenience, business actors such as insurance have developed innovations in making policies electronically. This clearly contradicts the article formulated by the Criminal Code Article 256.

2 Result and Discussion

2.1 The occurrence of an Insurance Agreement.

The KUHD does not explicitly state when the insurance agreement occurs. Article 255 of the Commercial Code states that insurance must be made in writing in a deed called a policy. If you look at what is described in this provision at a glance, it seems as if the validity of an insurance agreement must be made in writing in a deed called a Policy. However, this conclusion is not correct, because if you pay attention to Article 257 of the Commercial Code, it is clearly stated that an insurance agreement is formed when an agreement occurs between the Insurer and the Insured, even though the policy has not been handed over by the insurer to the insured. To be precise, Article 257 of the Commercial Code is explained as follows:

- 1) The insurance agreement is issued immediately after the agreement is closed; The reciprocal rights and obligations of the insurer and the insured come into effect from that moment, even before the policy is signed.
- 2) The closing of the agreement issues an obligation for the insurer to sign the policy within the specified time and hand it over to the insured.[2]

Referring to the provisions above, it can be stated that the insurance agreement has existed since the agreement was made. As stated by Wirjono Prodjodikoro, an insurance agreement is a consensual agreement, that is, it is considered to have been formed by mere agreement between the two parties. Starting from this idea, even though the policy has not been handed over by the insurer to the insured, the rights and obligations of the parties have been established since there was an agreement between the insurer and the insured regarding the object and terms of the agreement insurance. As proof that an insurance agreement already exists, J. Tinggi Sianipar, stated that as written evidence that an insurance agreement has been entered into and the rights

and obligations of both parties have begun to come into effect, the insurer usually issues a Cover Note. Because the purpose of the Cover Note is only as proof that the insurance agreement has come into effect, the information contained in it is only the main points of the agreement, while a detailed explanation regarding this matter is described in the Policy.

Thus, the existence of an agreement gives rise to the rights and obligations of the parties. This is in accordance with the principle of consensualism adopted in contract law, as explained in Article 1320 of the Criminal Code. The validity of an agreement is based on the agreement of those who make the agreement. Furthermore, Article 1338 paragraph (1) of the Criminal Code states that the agreement is binding on both parties who make it. To prove the existence of an insurance agreement before the insurance policy is issued, it is described in Article 258 of the Criminal Code as follows.

- a) To prove the closing of the agreement, written proof is required; However, other means of proof may also be used, if there is already a beginning of proof in writing.
- b) However, special provisions and conditions may, if a dispute arises regarding this, within the period between closing the agreement and handing over the policy, be proven by all evidence; but with the understanding that all matters which in certain types of coverage are required by statutory provisions, under threat of cancellation, to be explicitly stated in the policy, must be proven in writing.[3]

Departing from the provisions above, even if the policy has not been handed over by the insurer to the insured, if there is a problem in proof, it can be done through means of evidence are used, as regulated in Article 1866 of the Data Code as follows: the means of evidence consist of: written evidence, witnesses, allegations, confessions, oaths. If the insured does not have other evidence, this can be done using a severance oath as stated by R. Wirijono Prodjokoro. The evidence in question includes a severance oath. It was further stated that, both in the Criminal Code and in practice, it can be concluded that the insurance agreement is a consensual agreement.[4] Just remember Article 257 paragraph (1) of the Commercial Code and the provisions of insurance airline policies which state that the insurance agreement will come into force when the policy is handed over or has first been paid.

As is known, the form of agreement in an insurance agreement begins with filling out an application form by the insured. The insured person fills out the form provided by the insurer. In addition to containing the personal data of the insured person regarding the object of the insurance agreement, there are also several questions that must be filled in (answered) by the insured person. The completed form is an inseparable part of the policy. Therefore, filling out the form must be done completely and correctly. Because if it is not done completely and correctly it could be a reason to terminate the insurance agreement. And it could be that incompleteness in filling out the form is a reason for the insurer not to pay the claim. In this connection, it is worth pondering, what was stated by the Indonesian Insurance Council, that insurance agreements have long been a contract of utmost good faith, namely an agreement in which both parties are obliged to seriously implement it in good faith.

When an insurance agreement ends, in the insurance literature, insurance experts and practitioners, such as J. Tinggi Sianipar, suggest that insurance agreements end for two reasons, namely:

- 1) Ends or cancels prematurely, this can happen:

- a. If the insured does not provide information in accordance with utmost good faith, for example when the coverage is closed, a loss has occurred and is not notified. In such a case the policy is void from the start (as if the insurance coverage never existed).
- b. If the insured does not have insurable interest in the goods or interests insured
- c. If there are deviations from the policy provisions. In such a case the policy is deemed to be void as soon as the deviation is committed.
- d. If the closure is double insured for one type of goods with the full value for the same risk period, then in accordance with the law, the policy previously made will remain valid and the later policy will be invalidated.
- e. If the journey is terminated prematurely. If the insured stops the trip before arriving at the destination, the policy will end immediately after the termination is legally carried out.
- f. The policy can also end prematurely, if one party cancels it. For term policies as well as open policies and open cover, usually a deadline for notification of cancellation is also stated, called a "notice of cancellation", generally 30 days for ordinary marine risks.[5]

2) End naturally. The policy will end automatically if the provisions regarding the closing period have been fulfilled. This could happen:

- a. For the voyage policy, a ship is closed when the journey has been completed, which means after the ship arrives safely at its destination.
- b. For term policies which are usually carried out for ship closures, the policy in question ends after the arrival of the date stated in the policy in question. If the time is not stated then it is usually taken at 24 pm or 12.00 noon.
- c. The policy will also end immediately, after the insurer pays the total loss claim.
- d. If the cancellation is made with the consent of both parties.""

From the explanation of insurance experts and practitioners above, it further strengthens the idea that the end of the insurance agreement is at least because there are 2 (two) possibilities, namely the theme of the insurance agreement ending naturally. What is meant by reasonable in this case is that the insurance agreement ends according to the time stated in the policy; and Second, the insurance agreement ended unfairly. What is meant by unreasonable in this case is that the insurance agreement ends because it is canceled by one of the parties before the insurance agreement ends in accordance with what is stated in the policy. The reason for the cancellation of the insurance agreement was because it did not fulfill the terms of the insurance agreement. The condition in question is that the insured has no interest in the insurance object. For indemnity insurance (general insurance) regarding interests, it is described in Article 268 of the Commercial Code, namely that coverage can cover all interests that can be valued in money, can be threatened by a danger, and are not excluded by law. Meanwhile, life insurance is regulated in Article 302 of the Criminal Code as follows:

"A person's soul can, for the purposes of an interested person, be insured, both for the life of that soul, and for a time specified in the agreement.

Furthermore, Article 250 of the Criminal Code states:

If a person who has entered into insurance for himself or herself, or if a person for whom insurance has been entered into, does not have any interest in the insured item at the time the insurance is made, then the insurer is not obliged to provide compensation.

Apart from the reasons mentioned above, the insurance agreement can also be canceled because there is no good faith on the part of the insured. This is explained in Article 251 of the Criminal Code, which states as follows.

"Every statement that is false or untrue, or every failure to disclose things known to the insured, no matter how good faith he has, is of such a nature that, if the insurer had known the actual situation, the contract would not have been closed or closed properly. the same conditions, resulting in the cancellation of coverage." [6]

In relation to the termination of the insurance agreement due to cancellation, it is interesting to follow the opinion expressed by Wirjon Prodjokoro as follows. In an attempt by the legislators to prevent gambling or betting under the insurance blanket, Article 254 of the Criminal Code states that deviations in insurance agreements from the meaning of insurance (wezen der asurantie) are void. However, it is also necessary to state here that there is a possibility that insurance coverage for one insurance object may be carried out several times. If this happens, then in this case the following provisions of Article 278 of the Criminal Code apply. [7]

a. If in the only policy, even in the days. If different insurers exceed the price, then they together, according to the balance of the amount for which they have signed the policy, bear only the actual price insured.

b. The same provisions apply, if on the same day, regarding a single item, various guarantees have been held

2.2 Policy as Proof of Insurance

The implementation of an insurance agreement is followed by the existence of policy provisions. Where the policy is a form of deed which has the power to prove that an agreement has occurred between the insurer and the insured. So the substance of the policy contains the rights and obligations of each party. If you pay attention, it is within your rights for the insured to receive a transfer of a condition experienced by him as a form of compensation for a condition experienced after the insured has fulfilled his obligations. The obligation here is to hand over or pay a sum of money to the insurer. Likewise, the insurer has the right and obligation, namely to receive a certain amount of payment from the insured in accordance with the contents of the agreement and to fulfill compensation payments to the insured who experiences a risk. So it can be said that the policy is used as the basis for the implementation of insurance that has been mutually agreed upon and approved.

An insurance policy is a document that contains a contract between the insured party and the insurance company. It can be a small piece of paper, a short, uncomplicated agreement. Or it

can also be a long document that is three inches thick, containing insurance agreements for assets with various interests spread across the world against various kinds of disasters. However, whether it is concise and simple or long and complex, an insurance policy states the rights and obligations of the parties to the contract.

According to the provisions of Article 255 of the Criminal Code, insurance agreements must be made in writing in the form of a deed called a policy which contains agreements, special conditions and special promises which are the basis for fulfilling the rights and obligations of the parties (insurer and insured) in achieving insurance objectives.[8] Thus, the policy is written evidence of the existence of an insurance agreement between the insured and the insurer.

Considering its function as written evidence, the parties (especially the insured) are obliged to pay attention to the clarity of the contents of the policy, which should not contain words or sentences that allow for differences in interpretation. so that it can cause disputes. The general functions of the policy include:

- a. Is proof of the insurance agreement;
- b. As proof of guarantee from the insurer to the insured to compensate for losses that the insured may experience due to unforeseen events with the principles, namely;
- c. To return the insured to his original position before experiencing the loss;
- d. To prevent the insured from bankruptcy. [9]

The policy as a written document has a very important role in the insurance agreement. The policy states the rights and obligations of the insurer and the insured. In the insurance law literature, legal experts remind prospective buyers of insurance policies to really read the policy, because the policy as a form of insurance agreement has its own characteristics when compared to agreements in general. The policy functions as written evidence that there has been an insurance agreement between the insured and the insurer. As written evidence, the contents stated in the policy must be clear and must not contain words or sentences that allow for differences in interpretation, making it difficult for the insured and insurer to realize their rights and obligations in implementation of insurance." In relation to proof, it is a principle in insurance that it is the insured who is obliged to prove whether the loss he suffered was a direct result of the dangers (perils) guaranteed by the policy and whether the claim he submitted was reasonable or not? If there is any doubt In this proof and the matter is brought to court while the judge himself doubts whether the loss is covered by the policy and whether the proof provided by the insured meets the provisions of the policy, then usually the judge decides which profitable for the insurer on the grounds that the insured failed to prove the truth of his claim.

The insurance policy is a very important thing in the insurance agreement. Therefore, it is a good idea if you want to buy an insurance policy to first study what the rights and obligations of prospective policy buyers are. As explained in previous chapters, insurance is an agreement. There is also a form of written insurance agreement, namely an Insurance Policy. The policy is a written document. Unlike agreements in general, the form of the policy has been made in the form of a standard contract by the insurance company. As stated by Safri Ayat, as follows.

Policy comes from the Latin word Polizia, which means a document containing an agreement between the insured and the insurer, in Indonesian it is called a policy. In contrast to other agreements, where both parties are free to determine the conditions and conditions to be agreed, this is not the case in insurance agreements, where the agreement is stated in the form of a policy whose contents are generally standard.[6]

Normatively, it is regulated that marketing insurance products must not mislead potential policy buyers. The information submitted must also be relevant to the product being offered. Regarding the products offered, business actors, in this case insurance companies, must not mislead consumers in marketing their products. This is confirmed in Article 10 of the Consumer Protection Law (UUPK) which states the following. "Business actors in offering goods and/or services intended for trading are prohibited from offering, promoting, advertising or making false or misleading statements regarding:

- a. price or tariff of a good and/or service;
- b. the use of goods and/or services;
- c. conditions, guarantees, guarantees, rights or compensation for goods and/or services;
- d. discounts or attractive prizes offered; And
- e. dangers of using goods and/or services. [10]

Prospective consumers or policy buyers must be active in seeking as much information as possible so that they fully understand what the rights and obligations are in the insurance agreement.

2.3 Validity of Electronic Policies in Unitlink Insurance Agreements According to the Legal Provisions in Indonesia

Considering that the position of policies is very important in insurance, the Minister of Finance issued a Decree of the Minister of Finance of the Republic of Indonesia regarding Insurance Business and Insurance Companies (Decree of the Minister of Finance of the Republic of Indonesia Number 422/KMK.06/2003 concerning Insurance Company Business Misconduct). The article in these provisions states the following:

"The insurance policy must contain at least provisions regarding:

- a. When coverage takes effect
- b. description of the benefits promised
- c. how to pay premiums
- d. grace period for premium payments
- e. exchange rate used for insurance policies with foreign currencies if premium and currency payments are linked to the rupiah currency
- f. the time recognized as the moment the payer receives the premium and
- g. company policy that is determined if premium payments are made after the agreed deadline.[11]

Nowadays, the policy form is generally in the form of a standard contract or standard contract. For this reason, apart from the contents of the policy, the letters printed in the policy must also be able to be read clearly and understood by the insured as stated in Article 9 of KMK No. 422/2003 as follows:

Insurance policies must be printed clearly so that they can be read easily and understood either directly or indirectly by the policy holder and/or the insured. Another thing that is also regulated in KMK No. 422/2003, namely regarding the use of the language used. If insurance is marketed in Indonesia, it must use Indonesian. And if you want to use a foreign language, it must be used side by side with Indonesian. This is explained in Article 10 as follows.[12]

(1) Every Insurance Policy issued and marketed in Indonesian jurisdiction must be made in Indonesian.

(2) If necessary, the Insurance Policy can be made in a foreign language alongside Indonesian."

Insurance agreements have their own characteristics when compared to other agreements in general. Therefore, in the writing contained in the policy there are several sentences and/or words that need attention from the policy holder. In short, in the Policy there are several words or sentences deliberately italicized or bolded. In the insurance business, the letter in question has meaning and it could be that the letter trumps other statements.

Regarding the policy provisions in accordance with the legal terms of the agreement as stated in Article 1320 of the Civil Code, there are also insurance agreement requirements based on the Trade Code because insurance agreements have specificities. Article 255 of the Commercial Code states that "Insurance must be carried out in writing with a deed, which is given the name of the policy. (Commercial Code 256)

"There is a specificity in insurance agreements, namely that the agreement must be made in writing with a deed which is then called a policy. The definition itself is written in the Commercial Law Book and there is no further explanation. The Commercial Code explains further what must be stated in the policy, Article 256 of the Civil Code.

Insurance provisions in Indonesia are generally found in the Trade Code and Civil Code. Specifically, insurance regulations in Indonesia are contained in Law No. 40 of 2014 concerning the implementation of insurance businesses. The Criminal Code is a provision issued by the Netherlands, so if it is related to current technological developments, the provisions issued by the Netherlands can cause problems because currently they are no longer in line with current developments.[13]

Technological developments have also occurred in the world of insurance, various insurance companies have released the latest innovations to make it easier for insurance companies to carry out insurance agreements with policy holders in the form of electronic policies. The advantage of using this electronic policy is that the policy creation process will be faster and make it easier for customers or policy holders. With the implementation of an electronic policy,

of course it is not in accordance with the policy provisions regulated by the Criminal Code Article 255. So the written meaning stated in Article 255 of the Commercial Code "Insurance must be carried out in writing with a deed, which is given the name of the policy" has a written meaning on paper (black and white), does not match the policies currently in circulation.[14]

The KUHD which is still used as the basis for making insurance agreements, results in electronic policies being invalid as a basis for making insurance agreements, not in accordance with the law, namely Article 255 of the KUHDagang because the e-policy used in the insurance agreement does not comply with the written meaning intended by the KUHD So e-policy this does not fulfill the fourth legal requirement of the agreement, namely halal causes. Insurance agreements in Indonesia adhere to the principle of freedom of contract (Article 1338 of the Civil Code), meaning that each party entering into an agreement is free to make an agreement as long as the contents of the agreement do not conflict with applicable legal principles, do not violate decency and public order (see Article 1337 of the Civil Code). However, insurance agreements conflict with the insurance principles regulated by the Commercial Code, so insurance agreements using e-policies conflict with the Commercial Code which is equivalent to the law. It can be concluded that the insurance agreement can be interpreted as not fulfilling the objective requirements of an agreement which could result in the agreement being null and void.

3 Conclusion

E-policy as a form of agreement generally meets the requirements for the validity of an agreement based on Article 1320 of the Civil Code. However, as a form of e-policy agreement, it is also regulated in the Trade Code, contrary to Article 255 of the Trade Code, where insurance must be carried out in writing with a deed, which is named the policy. What causes e-policy to be interpreted as not fulfilling the fourth legal condition of the agreement, namely halal reasons, is because e-policy is in conflict with the Trade Code which is equivalent to the law.

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