

Legal Review of Clauses in Fire Insurance Policies

Mas Rara Tri Retno Herryani.

Faculty of Law, University of Kadiri, Indonesia.

Article history:

Received 2023-04-14

Revised 2023-05-19

Accepted 2023-08-01

Keywords:

Clause; Insurance; Act.

DOI:

10.26905/idjch.v14i2.10815.

Corresponding Author:

Mas Rara Tri Retno Herryani

E-mail: masrara@unik-kediri.ac.id

Abstract: Insurance is an important thing to have if there is a risk of something detrimental happening. Insurance is regulated by laws and regulations. In addition, setting fire insurance policies based on applicable legal norms will create legal certainty for the parties involved in the insurance agreement. Normative legal research which is often also called doctrinal legal research focuses on activities carried out by examining literature and secondary data in the form of primary and secondary legal materials. The insurance policy contains the terms contained in the insurance agreement. This policy can be considered the same as a clause in a civil agreement. A cause is said to be contrary to the law if the contents of the cause in the relevant agreement are contrary to the law if the contents of the cause in the relevant agreement are contrary to the applicable law. Determining whether the cause of an agreement is contrary to decency (*geode seen*) is not an easy matter because the term deficiency is very abstract, the contents of which can vary between one region and another or between one community group and another. In addition, people's evaluation of disability can also change according to the times.

1. Introduction

The insurance industry is a form of Non-Bank Financial Institutions that play a role as one of the driving pillars of the national economy.¹ Over the past few years, the development of insurance in Indonesia has shown pretty good progress. Insurance companies show stretching growth in the business they run, which is getting more and more customers day by day using insurance services in their lives. Public awareness of the importance of protection against various risks that can occur and befall themselves at any time is one of the reasons for the high number of health users lately. This is, of course, a distinct advantage for insurance companies that provide insurance services, where there will be a broader market that can be used as sales targets for the products they have.²

Therefore, every risk that will be faced must be overcome so as not to cause even more significant losses. It is an insurance company that is willing and able to bear every risk that will be faced by its customers, both individuals and business entities. Under these conditions, insurance

¹ Stefany Palyama, "PERLINDUNGAN HUKUM PEMEGANG POLIS ASURANSI JIWA DI INDONESIA (STUDI KASUS PT. ASURANSI JIWASRAYA)," *Jurnal Hukum & Etika Kesehatan*, (August 12, 2022), 84-94, <https://doi.org/10.30649/jhek.v2i1.48>.

² Togar Manihuruk, Yeni Triana, and Hj. Hasnati, "KEDUDUKAN HUKUM PEMEGANG POLIS PERUSAHAAN ASURANSI PAILIT DI INDONESIA," *Kertha Semaya: Journal Ilmu Hukum* (Edisi Elektronik), (November 14, 2020), <https://doi.org/10.24843/ks.2020.v08.i11.p07>.

will certainly make future risks manageable. In principle, insurance is an agreement between the insured and the insurer to negotiate compensation suffered by the insured which will be reimbursed by the insurer (insurance company) after the insured agrees to pay a sum of money called a premium. Insurance began to develop in England. Precisely in London, it has stood as the first insurance company in the world. This company was founded in 1688. Initially, this insurance company emerged from a small coffee shop called Edward Lloyd's, whose name was used as the name of the first insurance company in the world. Initially, insurance was proliferating in European countries. Therefore, the Dutch also innate insurance in Indonesia around the 1800s. So that regulations regarding insurance in Indonesia are still primarily based on regulations inherited from the Dutch East Indies legal system. One of the legal products that regulate insurance from the Dutch East Indies era, which was adopted into the Indonesian legal system, is the Indonesian Criminal Code (KUHD).

In Indonesia, insurance is regulated by central government legislation. In these rules, insurance has the meaning as an agreement between two parties, namely the insurance company and the policyholder, which forms the basis for receiving premiums by the insurance company in exchange for providing reimbursement to the insured or policyholder due to loss, damage, costs incurred, lost profits, or legal liability to third parties who may suffered by the insured or the policyholder due to the occurrence of an uncertain event; or provide payments based on the death of the insured or payments based on the life of the insured with benefits of a predetermined amount or based on the results of fund management. Insurance, in this case, has a function as a risk transfer for customers.³

The Indonesian Criminal Code is a derivative of "Wetboek van Koophandel" (W.v.K), which is made based on the concordance principle (Article 131 I.S.). Based on Article II of the transitional rules of the 1945 Constitution of the Republic of Indonesia, the Criminal Code is still valid in Indonesia. The Indonesian Criminal Code was announced with a publication dated 30 April 1847 (S.1847 - 23), enacted on 1 January 1848 if you look at the provisions of Article 1774 of the Criminal Code. The inclusion of insurance/coverage in the same family as the "Fortunate Agreement," but if you look at the last part of Article 1774 of the Civil Code. "The first agreement (coverage agreement) is regulated in the Commercial Code. So that means the coverage agreement is not subject to the Criminal Code, primarily based on Article 1774 of the Civil Code. But subject to the Criminal Code.⁴ So if you look at the introductory provisions of Insurance, the regulations referred to are Article 246 of the Criminal Code and Law No. 40 of 2014 concerning Insurance. Based on several types of Insurance in Indonesia, the author is interested in discussing in-depth fire insurance. Fire is one of the disasters that often occurs in DKI Jakarta. This disaster did not only occur in multi-story buildings but also hit several objects, such as houses, public buildings, and so on.

The definition of Insurance or coverage in the Commercial Law Code (KUHD) Article 246 stipulates: "Insurance or coverage is an agreement, by which an insurer binds himself to an insured, by receiving a premium, to provide compensation to him due to a loss, damage or loss the

³ Faridatul Aliyah and M. Fikri Himmawan, "TINJAUAN HUKUM SYARIAH PADA PRODUK ASURANSI BERKAH SAVE-LINK (STUDI KASUS PADA PT MANULIFE INDONESIA)," *Jurnal Justisia Ekonomika*, (December 26, 2020), <https://doi.org/10.30651/justeko.v4i2.6560>.

⁴ Arief Suryono, *Pengetahuan Dasar Hukum Asuransi*. (Surakarta: UNS Press. 2020) 5.

benefits he faces that he might suffer because of an uncertain event.⁵ Insurance is a financial means of managing household life, both in facing fundamental risks, such as death or in facing risks to property owned. An insurance company is a non-bank financial institution that has a role that is not much different from a bank, which is engaged in providing services to the public in the future.⁶

The concept of insurance, in principle, is a risk transfer. In this case, there is a transfer of risk from the policyholder or customer to the insurance company, in which the policyholder or customer is required to pay the insurance premium according to the agreement. The problem is that, generally, the agreed period of insurance protection is with a relatively long grace period. We also are still determining what will happen to the insurance company in the next five, ten, or even twenty years. It is necessary that, for one reason or another, an insurance company may later be declared bankrupt through a court process. A court decision declaring an insurance company bankrupt will significantly impact all of the insurance company's customers. Customers' money, both not yet due or past due when the insurance company in question is declared bankrupt, must be protected by law.

The Central Statistics Agency (BPS) noted that there were 3,156 objects of fire disaster in DKI Jakarta in 2020. The objects of fire disaster that most frequently hit DKI Jakarta were housing, totaling 1,898 objects or around 60.13% of the total fire disaster objects in the Capital City. The installation outside the building is the next object of a fire disaster. It was recorded that 436 objects fire disasters occurred in DKI Jakarta in 2020. Next, as many as 429 objects of fire disaster occurred in public buildings in DKI Jakarta. Then, as many as 137 and 86 objects of the fire disaster in DKI Jakarta hit motorized vehicles and garbage. There are also 34 objects of fire disaster in DKI Jakarta in the form of plants. He was followed by stalls and industrial buildings with 20 and 17 objects, respectively. The report from the DKI Jakarta Provincial Fire Management and Rescue Service noted that 1,505 cases of fires occurred in this city throughout 2020. The leading cause was power outages, with a total of 938 cases. So the number of fire disasters in one sample area is relatively high. Therefore, given the high level of risk of fire, fire insurance is a type of insurance that must be understood and owned by Indonesian people.

In its implementation, fire insurance is a mandatory requirement in various credit agreements. As an example of a credit agreement provided by a bank, a standard credit agreement clause made by a bank (in the form) requires the prospective debtor to ensure immovable property, which will be used as collateral in the credit agreement by burdening him with mortgage rights. This is so that if the immovable property is damaged/destroyed due to a natural disaster, the risk of the destruction of these items will be transferred to the insurance company so that the bank can still claim the value of the insured immovable property to the insurance company. With the signing of the insurance policy by the debtor and the insurance company in the insurance agreement, the debtor is bound to pay an amount of premium. In contrast, the insurance company is bound to compensate for the insured immovable property if it is damaged or destroyed due to natural disasters or other things beyond human control (force majeure).⁷

⁵ Rani Apriani Kevin Burjuan Adisatya Sirait, "Perlindungan Hukum Dalam Pelaksanaan Bisnis Asuransi Sebagai Bentuk Investasi Berdasarkan Hukum Positif Indonesia," *Zenodo (CERN European Organization for Nuclear Research)*, (December 5, 2022), <https://doi.org/10.5281/zenodo.7397326>.

⁶ Togar Manihuruk, Yeni Triana, and Hj. Hasnati, "KEDUDUKAN HUKUM PEMEGANG POLIS PERUSAHAAN ASURANSI PAILIT DI INDONESIA," *Kertha Semaya: Journal Ilmu Hukum (Edisi Elektronik)*, (November 14, 2020), <https://doi.org/10.24843/ks.2020.v08.i11.p07>.

⁷ Salim Abas, *Dasar-dasar Perasuransian*. (Jakarta: Rajawali Press. 2002) 63.

Fire insurance policies should be regulated in detail and follow the relevant regulations in Indonesia. This is expected to minimize the occurrence of disputes in fire insurance. In addition, setting fire insurance policies under applicable legal norms will create legal certainty for the parties involved in an insurance agreement. Many writings discuss insurance, but significant differences exist in the essence and issues raised by the authors, as was written by M. Alifadhil Syahran in the *Kertha Semaya Journal* titled "Responsibility and Legal Remedies for Payment of Insurance Claims Against Policy Holders Due to Insurance Company Bankruptcy. This writing discusses the liability carried out by insurance companies declared bankrupt to policyholders.⁸

Bambang Slamet Eko S discusses legal protection for insurance customers in the *Justitiabelen Journal of Tulungagung University* with the title *Juridical Review of Legal Protection of Insurance Customers*. Law Number 2 of 1992 concerning Insurance Enterprises was formed to regulate insurance activities. However, in its implementation, Law Number 2 of 1992 concerning Insurance Enterprises has not been adequate, so another Law that is aligned and capable of complementing the Law is needed. Namely Law Number 8 of 1999 concerning Consumer Protection.⁹ Anak Agung Ngurah Ananta Primarta and Ida Ayu Sukihana, in the *Kertha Semaya Journal* with the title *Legal Remedies for Policy Holders and Responsibilities of Insurance Companies, Declared Bankrupt*. The author legally analyzes the position of policyholders in insurance companies that are declared bankrupt.¹⁰ Based on the above, the issues raised by each author are different from the issues that will be raised in this journal.

2. Method

An in-depth analysis of the problems faced is required to study legal phenomena. The analysis is carried out using specific methods, systematics, and ideas. This type of research uses normative research methods, namely legal research that places law as a system of norms. Normative legal research, often referred to as doctrinal legal research, focuses on activities carried out by examining the literature and secondary data in the form of primary and secondary legal materials. The nature of the research is prescriptive research, namely a study that aims to get suggestions about overcoming specific problems.

3. Clauses in the Fire Insurance Policy that are by with Legislation in Indonesia

The term for insurance comes from the Dutch language, namely *me*.¹¹ *Insurance* is an insurance agreement made by two or more parties. Where one party pays a sum of money to get coverage, and the paying party gets a service or product to get risk coverage for what he pays can be in the form of life, health, or property insurance belonging to that person. Insurance services or products, 2. Insurance law, according to

⁸ M. Alifadhil Syahran and Marwanto Marwanto, "PERTANGGUNGJAWABAN DAN UPAYA HUKUM PEMBAYARAN UTANG KLAIM ASURANSI TERHADAP PEMEGANG POLIS AKIBAT KEPAILITAN PERUSAHAAN ASURANSI," *Kertha Semaya: Journal Ilmu Hukum* (Edisi Elektronik) 8, no. 11 (November 14, 2020): 1806, <https://doi.org/10.24843/ks.2020.v08.i11.p13>.

⁹ Bambang Slamet Eko S, "TINJAUAN YURIDIS PERLINDUNGAN HUKUM TERHADAP NASABAH ASURANSI," *Yustitiabelen - Universitas Tulungagung*, (July 14, 2020), <https://doi.org/10.36563/yustitiabelen.v6i1.219>.

¹⁰ Anak Agung Ngurah Ananta Primarta, "UPAYA HUKUM PEMEGANG POLIS DAN TANGGUNG JAWAB PERUSAHAAN ASURANSI YANG DINYATAKAN PAILIT," *ojs.unud.ac.id*, (June 15, 2021), <https://doi.org/10.24843/KS.2021.v09.i08.p11>.

¹¹ I Made Jaya Suastika, "TANGGUNG JAWAB HUKUM OTORITAS JASA KEUANGAN DALAM MENYELESAIKAN SENGKETA ASURANSI DI INDONESIA," *ojs.unud.ac.id*, (January 24, 2023), <https://doi.org/10.24843/KS.2023.v11.i02.p16>.

Law No. 2 of 1992 dated 11 February 1992, concerning Insurance Business is a collection of written and unwritten regulations, which are intended to bind both parties entering into an insurance agreement between the parties, namely the insurer and the insured.

Legal protection for the insured in an insurance agreement is a proper matter. Compliance with insurance companies in providing protection is mandatory. In this case, legal protection for the insured in the insurance agreement creates a relationship where one person has the right, and the other is obliged to fulfill the performance. As a party to an agreement, the position of the insured and the insurer in the insurance agreement must have an equal position. Law Number 8 of 1999 concerning Consumer Protection (UUPK) also regulates the rights and obligations of business actors, in this case, the guarantor in insurance, as stated in Article 6 of the UUPK.¹²

Likewise, in legal protection for the insured in the insurance agreement, in this case, the rights of the insured regulated in the insurance agreement are reviewed from the law regarding insurance, namely Law Number 40 of 2014 concerning Insurance.¹³ So the legal basis in the Civil Code (KUHper), Commercial Code (KUHD), and Law Number 40 of 2014 concerning Insurance can be used as a juridical basis in providing legal protection for the insured in an insurance agreement and imposing sanctions on those who default.¹⁴

The insurance agreement is carried out based on good faith as stipulated in Article 1338 paragraph (3) of the Civil Code (Civil Code). Good faith is a condition consisting of honesty and belief in a purpose, loyalty to one's obligations or obligations, adherence to agreements in trade or business, and no intention to deceive or make an unreasonable profit. The agreement is considered invalid, null, and void if it is based on fraud and coercion. The insurer must compensate the insured party under the agreement between the two parties. The principle that applies in the most critical insurance agreement is the good faith of both parties between the insurer and the insured.¹⁵

In general, policies are made by the insurer; in policies that are made, it is not uncommon for there to be flawed provisions, such as not specifically regulating the object of coverage; there are standard clauses that weaken the position of the insured so that there are policies that lack detail in mentioning objects contained in the object of insurance (such as machines in office buildings). The insurance policy contains the provisions contained in the insurance agreement. So that it can be considered that the policy is the same as the clause in the civil agreement. Article 1320 of the Civil Code "determines that there are 4 (four) conditions for the validity of an agreement", namely: "First, there is an agreement for those who bind themselves; Second, the ability of the parties to agree; Third, a certain thing; and Fourth, a cause (causa) that is lawful. The above requirements pertain to the agreement's subject and object". The first and second requirements relate to the subject of the agreement or subjective terms. The third and fourth requirements relate to the object of

¹² Putu Sekarwangi Saraswati and I Wayan Wisadnya, "PERLINDUNGAN HUKUM TERHADAP NASABAH ASURANSI PADA PERJANJIAN ASURANSI KESEHATAN DI PT ASURANSI RELIANCE INDONESIA," *Jurnal Ilmiah Raad Kertha* 4, no. 2 (August 31, 2021): 93–103, <https://doi.org/10.47532/jirk.v4i2.330>.

¹³ Ryan Kurniansyah, "Perlindungan Hukum Bagi Pemegang Kartu Kredit Atas Fasilitas Tambahan Asuransi Yang Diberikan Oleh Penerbit Kartu Kredit," *Jurist-Diction*, (March 11, 2020), <https://doi.org/10.20473/jd.v3i2.18213>.

¹⁴ Abidah El-Khalieqy, "AKIBAT HUKUM BAGI NASABAH ASURANSI SELAKU DEBITUR TERHADAP PENOLAKAN KLAIM ASURANSI JIWA PADA PT. BANK RAKYAT INDONESIA Tbk (PERSERO)," *Revista De Patologia Tropical* 10, no. 1 (May 31, 2021): 121–130, <https://doi.org/10.28946/rpt.v10i1.1015>.

¹⁵ Rahmadany Firmansyah, Sihabudin Sihabudin, and M. Sudirman, "Pengaturan Klausul Pilihan Hukum Dan Pilihan Forum Dalam Perjanjian Asuransi Kapal Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (March 30, 2022): 77, <https://doi.org/10.17977/um019v7i1p77-86>.

the agreement or objective conditions. The distinction between the two prerequisites is also related to the issue of null and void (*nietig* or null and ab initio) and cancellation (*vernietigbaar* = *voidable*) of an agreement. If the objective conditions in the agreement are not fulfilled, then the agreement is null and void, or an agreement that has been canceled from the start, the law considers the agreement never existed. If the subjective conditions are not met, the agreement can be canceled, or as long as the agreement has not been canceled or not canceled by the court, then the agreement in question is still valid.

To study the legal consequences of the police not complying with the applicable laws and regulations, it is necessary first to understand the terms of the validity of the agreement, among others: 1. Agreed, Agree in the agreement is a meeting or conformity of will between the parties in the agreement. A person is said to give his consent or agreement (*Toestemming*) if he wants what is agreed upon. Mariam Darus Budruzaman described the agreement as a condition of an agreed will (*Overeenstemnde Wilsverklaring*) between the parties. The statement of the party offering is called an offer (*Offerte*). The statement of the party receiving the offer is called acceptance (*acceptance*). J. Satrio said there are several ways to express this will: First, explicitly. 1) With an authentic deed. 2) With a deed under the hand. Second, secretly. Even though the law does not say explicitly, from the existing provisions, including Article 1320 in conjunction with Article 1338 of the Civil Code, it can be concluded that, unless otherwise specified, the law does not determine how a person expresses his will. However, in the insurance agreement, the offer and acceptance are proven and outlined in a deed called the policy. So that in this case, the policy must be written clearly in a physical document. An agreement may contain legal defects or an agreement is considered non-existent if the things mentioned below occur, namely: a) compulsion (*dwang*), Any unjust action or threat that hinders the parties' free will is included in the act of coercion. In this case, every act or threat violates the law if the act is an abuse of the authority of one of the parties by making a threat, that is, every threat that aims to give the other party his rights eventually: authority or privilege. Coercion can be in the form of crime or threats of crime, imprisonment or imprisonment, confiscation and illegal possession, and other acts that violate the law, such as economic pressure, physical and mental suffering, putting a person in a state of fear, and so on. -other.

b) Fraud (*Bedrog*), fraud is an act of deception. "Article 1328 of the Civil Code" states that fraud is the reason for canceling an agreement. In the case of fraud, the party being deceived does state according to his will, but because of deception, his will is deliberately directed to something contrary to his proper will, which is the right action if there is no deception. In the case of fraud, the wrong image is deliberately implanted by one party to another. So, the element of deception is not only a false statement, but there must be a series of lies (*samenweefsel van verdichtsel*), a series of stories that are not true, and any deceptive actions/attitudes. In other words, fraud is an act of malicious intent committed by one party to the agreement made. The agreement intends to deceive the other party and make him sign the agreement. A misstatement is not deception, but deceptive actions accompany it. The fraudulent act must be carried out by or on behalf of the party to the contract. Based on the explanation above, it can be concluded that fraud consists of 4 (four) elements, namely: a) constitutes an act with malicious intent, except for cases of negligence in informing hidden defects in an object; b) before the agreement is made; c). with the intention or intent that the other party signs an agreement; and d) actions done solely with evil intentions.

c) Delusion (*Dwaling*), Where in this case, one party or several parties have a wrong perception of the object or subject contained in the agreement. There are 2 (two) types of errors, namely:

a) First, a person error, namely a mistake in the person, for example, an agreement was made with a famous artist, but then the agreement was made with an unknown artist just because he has the same name; b). Second, error in substance, which is a mistake related to the characteristics of an object; for example, someone who buys a Basuki Abdullah painting but, after arriving at the person's house, realizes that the painting he bought earlier is a copy of Basuki Abdullah's painting. In other cases, for the agreement to be rescinded, knowing must more or less know that the partner has agreed based on mistaken identification of the subject or person; c). Third, misuse of circumstances (*misbruik van omstandigheden*). Abuse of circumstances occurs when a person in an agreement is influenced by something that prevents him from making an independent judgment from the other party so that he cannot make an independent decision. This emphasis can be made because one of the parties has a particular position (e.g., a dominant position or has fiduciary and confidence characteristics). *Van Dune* stated that the abuse of this situation could occur because of economic advantage or psychology.

Therefore the fire insurance policy made by the insurer must be reviewed in detail by the insured before it is signed. The policies to be agreed upon in the fire insurance agreement do not contain errors in the writing of the subject or object of coverage. Apart from that, it should also be noted that there is no error in person or substance in interpreting the contents of a fire insurance policy. If these things happen, it is feared that the insured's position will be weaker when a dispute occurs in the fire insurance agreement because the one who makes the policy is usually the insurer.

2. Engagement Proficiency, The second condition for the validity of the agreement, according to Article 1320 of the Civil Code, is the ability to agree (*om eene verbintenis aan te gaan*). Here there is a mix-up in using the terms engagement and agreement. From the words "making" engagements and agreements, it can be concluded that there is an element of "intention" (deliberately). It can be concluded that it is suitable for legal agreements. Moreover, because these elements are listed as legal elements of the agreement, it is impossible to refer to an agreement that arises because of a law. According to J. Satrio, the proper term to describe the terms of this second agreement is the ability to agree. Article 1329 of the Civil Code states that everyone is competent. Then Article 1330 states that several people are incompetent to make agreements, namely: First, people who are not yet mature; Second, those who are put under forgiveness; and Third, women in marriage (after the promulgation of Law No. 1 of 1974 Article 31 Paragraph 2, women in marriage are considered legally capable).

According to Article 330 of the Civil Code, a person is said to be immature if he has not reached age 21. A person is said to be an adult if he is 21 years old or less than 21 years old but is married. In its development, based on Articles 47 and 50 of Law No. 1 of 1974, a person's maturity determines that the child is under the authority of parents or guardians until the age of 18. Furthermore, the Supreme Court, through Decision No. 447/Sip/1976 dated 13 October 1976, stated that with the enactment of Law no. 1 of 1974, the limit for someone under guardianship is 18 years, not 21 years. Henry R. Cheeseman 37 explains that under the standard law system, a person is said to be minor if he is not 18 years old (female) or 21 years old (male). In its development, generally, the states in the United States have agreed that maturity is determined if a person is 18 years old, which applies to both women and men. So that in a fire insurance agreement, the insured party who binds himself to fire insurance must meet the following criteria: 1). The same owner as the insured object; 2). Have legal skills; and 3). Not currently in the spotlight.

3. A certain thing, The third condition for the agreement's validity is the existence of a particular thing (*een bepaald onderwerp*). Article 1333 of the Civil Code stipulates that an agreement must contain an object (*zaak*) whose type can at least be determined. An agreement must have a particular object. An agreement must be regarding a specific matter (sentence of terms), meaning what was agreed upon, namely the rights and obligations of both parties. The type of goods intended in the agreement can at least be determined. The term goods referred to here is what, in Dutch, is called *Izaak*. *Zaak* in Dutch does not only mean goods in a narrow sense but also has a broader meaning, namely the subject matter. Therefore, the object of the agreement is not only in the form of objects but also in the form of services. J. Satrio concluded that what is meant by a particular thing in the agreement is the object of achieving the agreement. The contents of the achievement must be confident, or at least the type can be determined.

Seeing the explanation above, the object of fire insurance must be clearly defined and described regarding its specifications and uses in the policy. In this discussion, the author will exemplify the object of fire insurance coverage in the form of a building. In a building fire insurance policy, it is necessary to specify the insured building, including 1) Building occupation (use); 2) Separation distance from other objects; 3) Building construction class; 4) Building value; 5) Building area; 6) The environment around the building; and 7) Extension of selected benefits.

So if there are criteria above that should be mentioned in the policy, there is concern that there is a potential for disputes to arise when submitting a claim after an event has occurred. This must be avoided, and the parties who bind themselves must determine the subject matter of an object or object of coverage. Not only buildings but insured objects can also be plantations, warehouses, and even oil storage tanks. 4. The Cause of Halal Law, The fourth condition for the agreement's validity is the existence of a lawful cause. The word causation, translated from the word *oorzaak* (Dutch) or *causa* (Latin), does not mean something that causes someone to agree but refers to the content and purpose of the agreement. For example, in a sale and purchase agreement, the content and purpose or cause is that one party wants the property of an item, while the other party wants money.

Based on the explanation above, if someone buys a motorcycle intending to kill someone, the sale and purchase have a lawful cause. If the intention to kill is stated in the agreement, for example, the knife seller states that he is only willing to sell the knife if the buyer buys it or kills someone with his motorcycle, there is no lawful cause here. It is explained in Article "1335 jo 1337 of the Civil Code" that a cause is declared prohibited if it conflicts with law, decency, and public order. A cause is said to be contrary to the law if the contents of the cause in the relevant agreement are contrary to the law if the contents of the cause in the relevant agreement are contrary to the applicable law. Determining whether the cause of an agreement is contrary to decency (*geode seen*) is not an easy matter because the term decency is very abstract, the contents of which can vary between one region and another or between one community group and another. In addition, people's evaluation of decency can also change according to the times.

4. Analysis of Clauses in Fire Insurance

There has been no definition of public policy if it harms society or disrupts the security and welfare of the community (public safety and welfare). So that seeing the legal terms of an agreement, an insurance policy must be under the existing provisions unless the laws and regulations mandate otherwise. Suppose the fire insurance policy contains the cause of something prohibited

or contrary to the applicable laws and regulations. In that case, the agreement can be null and void because the fourth condition is not fulfilled. In a fire insurance agreement, the parties making the policy not only refer to the Civil Code but must also look at the provisions of the Criminal Code as the basis for more specific regulations governing fire insurance agreements.

According to Article "255 of the Criminal Code", coverage must be written in writing in a policy deed. Based on the provisions of Article "255 of the Commercial Code", the insurance agreement "must" be written in a deed called a policy so that it seems the policy is a condition for the insurance agreement.¹⁶ Meanwhile, according to Article 257 (1) of the Criminal Code, "The insurance agreement is issued immediately after it is closed; the reciprocal rights and obligations of the insurer and the insured come into effect from that time, even before the policy is signed.

If you pay attention, it seems contradictory between Article 255 KUHD and Article 257 (1) KUHD. According to Article 255 of the Criminal Code, the insurance agreement requires it to be written in the form of a policy. At the same time, Article 257 (1) of the Criminal Code applies the principle of consensual. How can we interpret the existence between Article 255 KUHD and Article 257 (1) KUHD? If we look closely at Article 255 of the Criminal Code, it does not require that the terms and conditions are void if there is no policy. This means that the policy is not a conditional void if the insurance agreement has not been issued, or the insurance agreement does not have to be written as a policy.

Examining further, based on the provisions of Article 258 paragraph (1) of the Commercial Code, namely: "To prove the closing of the agreement, written evidence is required; however, it is permissible for other means of proof to be used as well, when there is already a beginning of proof in writing." In the first sentence of the Article, the meaning of "writing" is a policy, while the "writing" in the last sentence is not a policy. The beginning of evidence other than the policy in the insurance agreement includes correspondence between the parties, insurance broker records, closing notes, and so on. It can be underlined that the policy is not a legal requirement of a fire insurance agreement. However, keep in mind that the position of the policy in the fire insurance agreement is a means of proving that a fire insurance agreement has occurred. Policies can be made under the parties' agreement if they do not violate the applicable legal regulations. However, it must be noted that policies that need to be more detailed and thorough have the potential to experience disputes in the future.

As is well known, the policy serves as written evidence stating that an insurance agreement has occurred between the insured and the insurer. As proof, the policy also contains agreements regarding special terms and special promises which form the basis for fulfilling rights and obligations to achieve insurance goals. This is under Article 1902 paragraph (1) "of the Civil Code which reads "If the law orders proof in writing" evidence with witnesses is permitted if there is initial written evidence unless each proof is not permitted other than in writing." POJK Number 23/POJK.5/2015 concerning Insurance Products and Marketing of Insurance Products explains that an insurance policy is an insurance agreement deed or other document equivalent to an insurance agreement deed and other documents that are an integral part of the insurance agreement. Insurance products must have 1). Premium or Contribution; and 2). Insurance Policy that does not contain words, phrases, or sentences that can: a) give rise to different interpretations regarding the

¹⁶ Suryono, Arief. *Pengetahuan Dasar Hukum Asuransi*. (Surakarta: UNS Press. 2020) 26.

risks covered, the Company's obligations, and the obligations of the policyholder, the insured, or participants; or b) make it difficult for the policyholder, the insured, or participants to take care of their rights.

Based on the understanding in POJK Number 23/POJK.5/2015 concerning Insurance Products and Marketing of Insurance Products, it can be interpreted that a fire insurance policy is not a legal condition for a fire insurance agreement. However, a fire insurance policy is an essential condition contained in a fire insurance policy. It would be nice if the policymaking had to be detailed and not conflict with the laws and regulations that were in force when signed by each party. The policy must be prepared in detail because of its position as evidence if there is a claim after an event. Substantial evidence will undoubtedly benefit each party in protecting its position and facilitating the resolution of disputes.

5. Conclusion

The insurance policy contains the provisions contained in the insurance agreement. It can be considered that the policy is the same as the clause in the civil agreement. In this case, you can refer to Article 1320 of the Civil Code regarding the legal requirements of an agreement. An insurance policy must comply with existing provisions to avoid the risk that the fire insurance agreement may be null and void. They appear contradictory if we examine Article 255 of the Criminal Code and Article 257 (1). Article 255 mandates that the insurance agreement be written as a policy, and Article 257 (1) mandates the application of the consensual principle. Article 258 of the Criminal Code mandates that the initial proof other than the policy in the insurance agreement can be in writing. So the policy is not a legal condition for the fire insurance agreement, but the policy is an essential condition contained in the fire insurance agreement. However, the policy's making must be detailed to avoid disputes between the insurer and the insured when the event has occurred. Even though it is not a legal requirement for a fire insurance agreement to occur, the parties bound by a fire insurance agreement should carefully review and read the policy's contents before signing it. Because in the fire insurance agreement, the policy is located as evidence that coverage has occurred. If parties are not careful in understanding the contents of the policy, it is feared that they will harm themselves and weaken their position in the eyes of the law. Accuracy is also needed in preparing the policy so that the fire insurance agreement is not canceled by law because the existing provisions are contrary to applicable law.

References

Abas, Salim. *Dasar-dasar Perasuransian*. Jakarta: Rajawali Press. 2002.

Aliyah, Faridatul, and M. Fikri Himmawan. "TINJAUAN HUKUM SYARIAH PADA PRODUK ASURANSI BERKAH SAVELINK (STUDI KASUS PADA PT MANULIFE INDONESIA)." *Jurnal Justisia Ekonomika*, (December 26, 2020). <https://doi.org/10.30651/justeko.v4i2.6560>.

El-Khaliegy, Abidah. "AKIBAT HUKUM BAGI NASABAH ASURANSI SELAKU DEBITUR TERHADAP PENOLAKAN KLAIM ASURANSI JIWA PADA PT. BANK RAKYAT INDONESIA Tbk (PERSERO)." *Revista De Patologia Tropical* 10, no. 1 (May 31, 2021): 121-130. <https://doi.org/10.28946/rpt.v10i1.1015>.

- Firmansyah, Rahmadany, Sihabudin Sihabudin, and M. Sudirman. "Pengaturan Klausul Pilihan Hukum Dan Pilihan Forum Dalam Perjanjian Asuransi Kapal Di Indonesia." *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (March 30, 2022): 77. <https://doi.org/10.17977/um019v7i1p77-86>.
- Kurniansyah, Ryan. "Perlindungan Hukum Bagi Pemegang Kartu Kredit Atas Fasilitas Tambahan Asuransi Yang Diberikan Oleh Penerbit Kartu Kredit." *Jurist-Diction*, (March 11, 2020). <https://doi.org/10.20473/jd.v3i2.18213>.
- Manihuruk, Togar, Yeni Triana, and Hj. Hasnati. "KEDUDUKAN HUKUM PEMEGANG POLIS PERUSAHAAN ASURANSI PAILIT DI INDONESIA." *Kertha Semaya: Journal Ilmu Hukum* (Edisi Elektronik), (November 14, 2020). <https://doi.org/10.24843/ks.2020.v08.i11.p07>.
- Palyama, Stefany. "PERLINDUNGAN HUKUM PEMEGANG POLIS ASURANSI JIWA DI INDONESIA (STUDI KASUS PT. ASURANSI JIWASRAYA)." *Jurnal Hukum & Etika Kesehatan*, (August 12, 2022), 84-94. <https://doi.org/10.30649/jhek.v2i1.48>.
- Primarta, Anak Agung Ngurah Ananta. "UPAYA HUKUM PEMEGANG POLIS DAN TANGGUNG JAWAB PERUSAHAAN ASURANSI YANG DINYATAKAN PAILIT." *ojs.unud.ac.id*, (June 15, 2021). <https://doi.org/10.24843/KS.2021.v09.i08.p11>.
- S, Bambang Slamet Eko. "TINJAUAN YURIDIS PERLINDUNGAN HUKUM TERHADAP NASABAH ASURANSI." *Yustitiabelen - Universitas Tulungagung*, (July 14, 2020). <https://doi.org/10.36563/yustitiabelen.v6i1.219>.
- Saraswati, Putu Sekarwangi, and I Wayan Wisadnya. "PERLINDUNGAN HUKUM TERHADAP NASABAH ASURANSI PADA PERJANJIAN ASURANSI KESEHATAN DI PT ASURANSI RELIANCE INDONESIA." *Jurnal Ilmiah Raad Kertha* 4, no. 2 (August 31, 2021): 93-103. <https://doi.org/10.47532/jirk.v4i2.330>.
- Sirait, Rani Apriani Kevin Burjuan Adisatya. "Perlindungan Hukum Dalam Pelaksanaan Bisnis Asuransi Sebagai Bentuk Investasi Berdasarkan Hukum Positif Indonesia." *Zenodo* (CERN European Organization for Nuclear Research), (December 5, 2022). <https://doi.org/10.5281/zenodo.7397326>.
- Suastika, I Made Jaya. "TANGGUNG JAWAB HUKUM OTORITAS JASA KEUANGAN DALAM MENYELESAIKAN SENGKETA ASURANSI DI INDONESIA." *ojs.unud.ac.id*, (January 24, 2023). <https://doi.org/10.24843/KS.2023.v11.i02.p16>.
- Suryono, Arief, *Pengetahuan Dasar Hukum Asuransi*. Surakarta: UNS Press, 2020.
- Syahrhan, M. Alifadhil, and Marwanto Marwanto. "PERTANGGUNGJAWABAN DAN UPAYA HUKUM PEMBAYARAN UTANG KLAIM ASURANSI TERHADAP PEMEGANG POLIS AKIBAT KEPAILITAN PERUSAHAAN ASURANSI." *Kertha Semaya: Journal Ilmu Hukum* (Edisi Elektronik) 8, no. 11 (November 14, 2020): 1806. <https://doi.org/10.24843/ks.2020.v08.i11.p13>.
-