

Post-Constitutional Court Judgment: Anticipating an Increase in Insurance Disputes Over Insured's Disclosure Obligations

Prepared by:

Michael A. Kaihatu (Partner) and Yonathan Aji Pamungkas (Associate)

It has recently been reported in the news¹ that an insurance company rejected an insured's claim due to a difference in information, and the insurance policy was terminated unilaterally.² During the marketing phase, an agent generally offers a wide range of benefits gained from participating in an insurance program. However, claims for these benefits are often rejected due to issues regarding the disclosure obligations based on the utmost good faith, a fundamental principle in Insurance Law.

Under Article 251 of the Indonesian Commercial Code ("**ICC**"), the insured has a disclosure obligation, and any breach results in the insurance policy being deemed void. On 3 January 2025, the Constitutional Court, through Judgment No. 83/PUU-XXII/2024 ("**Judgment**"), ruled that Article 251 of ICC is conditionally unconstitutional. This article will provide an overview of the change and the legal implications for the insurance sector in Indonesia.

Article 251 of ICC before the Judgment

The provisions of Article 251 of ICC read as follows:

"Every incorrect or false notice, or every concealment of conditions known by the insured, even though made in good faith, the nature of which is such that the agreement would not have been made, or would not have been made under the same requirements if the insurer knew the factual conditions of those matters, shall render the insurance void."

In essence, the above article means that the insured must provide actual notice and is forbidden to conceal any previously known conditions about the risk being insured against ("**Disclosure Obligation**").

Further, if:

- (i) such Disclosure Obligation is not fulfilled, although the insured has no bad faith; and
- (ii) the Disclosure Obligation had been fulfilled, the insurance policy would not have been made or would not have been made under the exact same requirements;

then, the insurance policy becomes void by operation of law ("**Implication of Failure to Meet Disclosure Obligation**" or "**IFMDO**").

In practice, this provision is utilised by insurers to unilaterally terminate insurance policies since such a breach of the Disclosure Obligation causes the insurance policy to be deemed legally invalid.

¹ "Klaim Asuransi Ditolak, Pemegang Polis Tuntut Kejelasan", tvonenews.com, <<https://www.tvonenews.com/berita/nasional/189513-klaim-asuransi-ditolak-pemegang-polis-tuntut-kejelasan?page=all>>

² We do not assert that the news report was true but merely mention it as an example of common practice.

The Reasonings and Legal Implications of the Judgment to Article 251 of ICC concerning the Disclosure Obligation

The Judgment has changed the interpretation of Article 251 of ICC. The relevant part of the Judgment reads as follows:

*“... Article 251 of the Commercial Code... is in conflict with the Constitution of the Republic of Indonesia of 1945 and has no binding legal force conditionally, **insofar as it is not interpreted to ‘including related to the annulment of insurance policy that must be based on the agreement between the insurer and insured or based on the court judgment’.**”*

In light of the above, the Constitutional Court affirms that even though the insured has failed to comply with the Disclosure Obligation, the insurance policy can only be terminated if termination: (i) has been agreed by both the insurer and insured; or (ii) has been declared by the court Judgment. This also means that the insurance policy cannot be terminated unilaterally.

The change of interpretation by the Constitutional Court is based on the following reasons:

1. Potential Multi-interpretation

The provision of Article 251 of ICC does not explicitly provide a termination mechanism for an insurance policy if there is a false notice and/or concealment of conditions. It only implies termination due to the insurance policy being deemed legally invalid.

2. Imbalance between Insured and Insurer

The provision of Article 251 of ICC appears to solely impose an obligation on the insured regarding the Disclosure Obligation without providing a balance of rights. This means the provision has not provided equal protection to the insured since the insurance policy will automatically be deemed void.

3. Potential Misuse to Avoid Obligations

Since the insurance policy is void if the IFMDO occurs, insurers may wrongfully utilise Article 251 of the ICC to avoid their obligations by terminating it unilaterally.

4. Objective and Fair Dispute Resolution

Unilateral termination is not justifiable when there is an insurance dispute, especially regarding the Disclosure Obligation. Hence, it encourages the dispute to be resolved amicably between the insured and the insurer. Should the dispute still not be resolved, it must be resolved through the court to ensure fair and transparent resolution.

5. Legacy of the Colonial Era

Article 251 of ICC is a colonial government product that has become outdated and is no longer aligned with the development and conditions of society.

As the occurrence of IFMDO does not automatically render an insurance policy invalid, it is likely to lead to an increase in insurance disputes on the Disclosure Obligation.

Therefore, insurance companies should enhance their verification processes to ensure that all information is thoroughly assessed and accurately verified in accordance with the Prudential Principle and Know Your Customer (“KYC”) Policy.

Key Points

A. Insurance Policies Cannot Be Terminated Unilaterally

In the case of IFDMO, an insurance policy termination: (i) must be agreed upon by the parties; or (ii) must be constituted by the court. This means the insurer cannot utilise the common practice of terminating the insurance policy unilaterally.

B. Rising Insurance Disputes

The new interpretation of Article 251 of ICC is likely leading to an increase in the number of insurance disputes concerning the Disclosure Obligation due to:

- (i) A dispute on the Disclosure Obligation can no longer be determined solely by the insurer but must instead reach a resolution agreed upon by the parties (which is unlikely to happen). Consequently, arbitration or the court becomes the authorised dispute resolution forum; and
- (ii) Ideally, Constitutional Court Judgments do not apply retroactively (non-retroactive). Therefore, the insurer may claim that all insurance policies made before the Judgment are still subject to the previous interpretation of Article 251 of ICC. On the other hand, the insured will have wanted the latest interpretation to be adopted in insurance policies. This discord inevitably carries the potential to cause disputes when submitting insurance claims.

C. **Dispute Avoidance through the Enhancement of Standard Policy**

Insurance companies must enhance their verification and validation of disclosed information to avoid disputes in the first place. This can be done by revising and tightening the applicable standard policy.

D. **Key Considerations for Insurance Companies and Agents**

(i) Agents and insurance companies must ensure clear and transparent communication in marketing insurance programs, highlighting policyholders' rights and emphasising the importance of fulfilling the Disclosure Obligation to prevent claim rejection down the line.

(ii) Further, if issues related to the Disclosure Obligation are unavoidable, it is essential to understand that the resolving process must be conducted transparently, involving both sides to obtain fair outcomes.

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The article above was prepared by Dentons HPRP's lawyers

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