



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 83/PUU-XXII/2004**

Concerning

Conditions for the Validity of Insurance

Petitioner	: Maribati Duha
Type of Case	: Judicial review of the Indonesian Commercial Code (KUHD) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 251 of the KUHD is contrary to Article 1 paragraph (3), Article 27 paragraph (1), Article 28D paragraph (1), and Article 28G paragraph (1) of the 1945 Constitution
Verdict	: <ol style="list-style-type: none">1. To grant the Petitioner's petition in part2. To declare that the norm of Article 251 of the Indonesian Commercial Code (<i>Staatsblad</i> of 1847 Number 23) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as "including that any rescission of insurance contract must be subject to the agreement between the insurer and the insured or on a court decision"3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate4. To dismiss the remaining petition of the Petitioner
Date of Decision	: Friday, January 3, 2025
Overview of Decision	:

The Petitioner is an individual Indonesian citizen who works as a livestock breeder and, by the 1945 Constitution, has the right to obtain guarantees of legal protection, fair legal certainty, and equal treatment before the law, as well as protection of property as regulated in Article 28D paragraph (1) and Article 28G paragraph (1) of the 1945 Constitution.

Regarding the Court's Authority, because the Petitioner's petition is a review of the constitutionality of norms of law, *in casu* Article 251 of the KUHD against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Regarding Legal Standing, the Petitioner describes that she was the heir of the beneficiary, the late Sopan Santun Duha, under the insurance contract with the Insured/Policyholder, the late Latima Laia, who is registered as the Insured/Policyholder of the Life Insurance with Policy Number 51928221 from PT Prudential Life Assurance (hereinafter referred to as Prudential) since November 25, 2013 or since the policy was approved. The beneficiary, Sopan Santun Duha, passed away on January 7, 2024, as evidenced by a death certificate, so that the benefit value that Prudential has not yet paid legally falls to, or becomes the right of, the Petitioner as the beneficiary's legal heir. In addition, the Petitioner explains that the provision of Article 251 of the KUHD opens up rooms for insurance companies to use it as a potent instrument to carry out various tricks aimed at avoiding their responsibility to pay claims, particularly to heirs. In addition, the article *a quo* does not provide any room for the insured/policyholder or the heirs to demonstrate that the fault or negligence did not lie with them and to prove that the insured has acted in the utmost good faith, as regulated in Article 1 paragraph (3) of the 1945 Constitution, namely the principle of the rule of law.

Regarding the description put forward by the Petitioner to explain the legal standing above, in the Court's opinion, the Petitioner has clearly explained the constitutional right alleged to be violated by the enactment of the norm of Article 251 of the KUHD, which is being petitioned for review. The Petitioner's alleged constitutional loss is specific and actual, or at least potential, and there has been a causal relationship (*causal verband*) between the Petitioner's alleged constitutional loss and the enactment of the provisions of the norm being petitioned for review because they have provided such a large space for insurance companies to exploit the norm *a quo* with various tricks to cancel or reduce the benefit value that the insured or the heirs is rightfully entitled to receive, thereby prejudicing the Petitioner. Therefore, if the Court grants the petition *a quo*, the alleged constitutional loss will not or no longer occur. Thus, regardless of whether the unconstitutionality of the norm argued in the petition is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as a Petitioner in the petition *a quo*.

Whereas the constitutionality issue that is challenged and must be decided by the Court is whether it is true that the norm of Article 251 of the KUHD is contrary to the 1945 Constitution and has no binding legal force, or is contrary to the 1945 Constitution and conditionally has no binding legal force, to the extent that it not interpreted as the alternative *petitum* in the Petitioner's petition.

Whereas before deciding the Petitioner's petition, the Court first explains the following matters.

1. Whereas under the regime of the law of obligations (*verbinten*is), an agreement is mutual consent between two or more parties to bind themselves to perform or refrain from performing certain acts. An agreement may also be understood as a contract, which is an obligation that binds the parties and carries legal implications. The parties to an agreement are subject to the general principles of contract law as outlined in the Indonesian Civil Code (KUHPPerdata). In the doctrine/theory of contract law, at least four fundamental principles apply in contracts, namely the principle of consensualism, the principle of freedom of contract, the principle of *pacta sunt servanda*, and the principle of good faith. The principle of consensualism holds that a contract comes into existence upon mutual consent, as provided in Article 1320 of the KUHPPerdata. The principle of freedom of contract means that every person may enter into a contract in any form and with any content, provided that it is not prohibited or contrary to law, morality, or public order, in accordance with Article 1337 of the KUHPPerdata. While the principle of *pacta sunt servanda* stipulates that a contract that is validly made shall have the force of law for the parties and must be performed in good faith, as regulated in Article 1338 of the KUHPPerdata. The principle of good faith (*tegoeder trouw*) contains two dimensions. The objective dimension requires that a contract be implemented in accordance with the norms of propriety, appropriateness, and morality prevailing in society. Meanwhile, the subjective dimension means that the parties to a contract are obliged to be honest, open, listen to each other, and not prejudice the other party. In this regard, these principles do not only apply to contracts in general, but also apply to insurance contracts, although in insurance contracts, more specific principles apply because of the unique character of insurance contracts.

Furthermore, an insurance contract is an obligation under which the insurer binds itself to the insured, in return for receiving a premium, to provide compensation for any loss, damage, or failure to obtain the expected profit that may be suffered as a result of an uncertain event [*vide* Article 246 of the KUHD]. Meanwhile, under Article 1 point 1 of Law Number 40 of 2014 concerning Insurance (Law 40/2014), "Insurance is a contract between two parties, namely the insurance company and the policyholder, which serves as the basis for the receipt of premiums by the insurance company in exchange for: a) providing compensation to the insured or policyholder for losses, damages, expenses incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policyholder as a result of the occurrence of an uncertain event; or b) providing payments on the death of the insured or payments on the survival of the insured, with benefits the amount of which has been predetermined and/or determined according to the results of fund management."

In this regard, the purpose of insurance is to transfer the risk of an unexpected event to another party who assumes the risk and provides compensation for losses. Thus, insurance functions to transfer or spread the risk of financial loss that may or will be suffered by the insured to the insurance company. Risk transfer from an individual to an insurance company is carried out under a contract or mutual agreement between the individual and the insurance company. The risk transfer in this insurance aims at reducing financial losses that arise and controlling risks to a lower level.

2. Whereas insurance contracts are contracts that have a special/unique character that cannot be equated entirely with contracts in general. Insurance contracts must fulfill certain principles that embody the nature or special character of the insurance contract itself, including the principle of insurable interest, the principle of indemnity, the principle of utmost good faith, and the principle of subrogation. In essence, all of these principles are in line with Article 250, Article 251, Article 252, Article 253, and Article 284 of the KUHD.

Whereas although the principle of good faith (*tegoeder trouw*) has become a general principle in contract law, as regulated in Article 1338 of the KUHPerdata, this principle is then further emphasized in insurance contracts through Article 251 of the KUHD, which is formulated as the principle of utmost perfect good faith or the principle of the best possible good faith (*uberrimae fidei*). The reason lies in the nature/conditions of insurance contracts arising from chance (*konsovereenkomst*), as regulated in Article 1774 of the KUHPerdata, which governs actions whose results, regarding profit and loss for all parties or for some parties, depend on an uncertain event. Therefore, reiteration of the principle of utmost good faith (*uberrimae fidei*) in an insurance contract is a logical consequence of the special nature of the insurance contract. Thus, in an insurance contract, the parties are obliged to provide everything, including information regarding the risks agreed upon. Furthermore, an insurance contract has an assumption that the prospective insured at the time of applying for insurance knows all the risks and conditions to be insured, while the insurer does not know these, so that the insurer, analyzing the insured risks, is more dependent on complete information provided in good faith by the prospective insured. The insurer should not be too quick to trust the insured's information alone. Therefore, to mitigate the risks that will arise, the information/statement from the insured should be supported by other evidence that can convince the insurer.

3. Whereas to protect the insurer and the insured on the basis of the principle of balance, it is also regulated that the insurer/insurance company is obliged to act in good faith and provide correct information regarding the insurance contract or insurance policy. This is important to emphasize because the position of the policyholder, the insured, or participant in an insurance contract, even though the clauses have been agreed upon, is relatively weaker on the basis that the obligation made voluntarily between the insured and the insurer, in essence, requires that the insured pays a sum of money in the form of an insurance premium to the insurer with the expectation that the insurer will compensate the insured for any loss, damage, or loss of profit expected by the insured,

including legal liability to third parties that may be suffered by the insured, which arises as a result of the occurrence of an uncertain event.

Pursuant to the above description, it is quite clear that the insurer's obligation to act in good faith and provide correct information is an extension of the regulation on the principle of utmost good faith, as regulated in Article 251 of the KUHD, which should apply not only to the insured but also to the insurer, namely insurance companies, agents and insurance brokers [*vide* Article 31 of Law 40/2014]. Furthermore, there is a criminal sanction for anyone who acts in bad faith and/or does not provide correct information in insurance business activities [*vide* Article 75 of Law 40/2014]. Therefore, both the insurer and the insured must have the same faith/intention in agreeing to the insurance obligation (insurance contract) by prioritizing the principle of good faith, which is realized in a valid contract not prejudicing either party.

4. Whereas furthermore, a valid contract must legally satisfy four conditions, namely: 1) the agreement of those who bind themselves; 2) the capacity to enter into an obligation; 3) a particular subject matter; and 4) a cause that is not prohibited [*vide* Article 1320 of the KUHPerdata]. Therefore, an agreement made through error or obtained through coercion, fraud, or the absence of mutual agreement between the two parties, or for reasons determined by law, or as a result of incorrect notification, or concealment of circumstances known to the insured, shall result in the nullity of the agreement in question [*vide* Article 1321, Article 1323, Article 1328, and Article 1338 of the KUHPerdata, and Article 251 of the KUHD]. Thus, the parties should always include conditions for nullity in the contract to demonstrate their good faith and obtain guarantees, protection, and legal certainty in its implementation. Therefore, the principle of good faith must be implemented appropriately and properly [*vide* Article 1338 of the KUHPerdata]. Regarding good faith, it must not only exist at the time of contract implementation, but also from the beginning, when a contract is made or signed. Because, at the start of the contract being made and signed, the principle of good faith must be fulfilled and implemented. Therefore, the insured and the insurer must not abuse the trust that has been given, including, in this case, providing each other with correct, complete, and honest data and information regarding the insured and their rights and obligations. Likewise, the insurer must also be honest and act in good faith by explaining the scope of the guarantee provided and the insured's rights clearly and responsibly.

In this regard, a good contract should also include conditions for nullity, as provided in Article 1266 of the KUHPerdata, which states that such conditions are always deemed to be included in a reciprocal contract if one of the parties fails to fulfill its obligations. In relation to this matter, in fact, the Court finds criteria for conditions for nullity or rescission of a contract, namely that the conditions for nullity or rescission of a contract must first be requested from the court, but on the other hand, the conditions for nullity or rescission of a contract can be directly carried out by the parties, and regarding insurance contract, the conditions for nullity or rescission in question can be carried out by the insurer or insurance company.

Whereas apart from the issue that legal actions may be taken on a contract rescission by filing a civil lawsuit to the court, either on the basis of an unlawful act or breach of promise (default), however, the fundamental issue that must be decided in the petition *a quo*, particularly regarding insurance contracts, is whether the conditions for nullity or rescission of a contract, either "void by law" or "rescindable", may be carried out by one of the parties (automatically) or whether there must first be a court's rescission.

In this regard, it is important to explain that the regulation on the inclusion of conditions for nullity (*nietig*) in a reciprocal contract, such as an insurance contract, is deemed to be always included. Therefore, in every inclusion of clauses in an insurance contract, it is mandatory also to include the nullity conditions in question. This means that if a contract does not include conditions for its nullity, the legal consequence is cancellation, whether it is void by law or rescindable under statutory provisions. Regarding insurance contracts, which have a special nature due to chance in their nature, where the contract is dependent on an event whose occurrence is uncertain, as

well as a reciprocal contract. Therefore, the main emphasis of the nature of the insurance contract must remain on providing protection and fair legal certainty to the parties, both the insurer and the insured. Moreover, universally, the insured party is in a weaker position in many cases, due to a limited understanding of the form of protection and legal certainty that they are entitled to, and the form and terms of the contract having been drawn up through a standard format (standard contract), which brings a more unbalanced impact on benefits. This is one of the crucial causes of inconsistency in the application of nullity conditions in the context of contract law of insurance, which will actually bring the parties to a complex, unclear, and uncertain situation, and give rise to legal implications on the insurance contract itself, which often distances them from the benefits of insurance coverage.

Pursuant to the legal considerations above, the Court will further consider the Petitioner's argument that challenges the constitutionality of the norm of Article 251 of the KUHD, which provides the nullity of insurance due to incorrect or false notification, or any concealment of circumstances known by the insured, even if done in good faith. Regarding the argument *a quo*, the Court considers that the principle of utmost good faith, or the best possible good faith, in an insurance contract is the fundamental condition that serves as an instrument for obtaining legal protection for the parties to the contract, both the insurer and the insured. This is important to emphasize because, as previously considered, an insurance contract is a special type of contract due to its chance-based nature, namely a contract on a legal event whose occurrence is uncertain. Therefore, as a party receiving the transfer of risk, the possibility of abuse of circumstances or traps arising from an imbalance in information control and the agreed risk factors must be avoided. Likewise, the party that will receive guarantees for fulfilling risk compensation must also be protected. Therefore, good faith is the primary key or basis for entering into an insurance contract. However, as is generally the case in a contract, the possibility that one of the parties will not fulfill the contents of the contract, whether intentionally or unintentionally, is a cause that cannot be avoided. This problem becomes a crucial legal issue for the parties, who resolve it through different legal arguments, *in casu* the insurer and the insured.

Pursuant to the legal considerations and legal facts as described above, the norm of Article 251 of the KUHD, after the Court carefully examines it, is a norm that also has the potential to give rise to various interpretations, particularly if it is correlated to the conditions for nullity of an insurance contract with issues relating to elements that are hidden by the insured, even in good faith. Because, the norm of Article 251 of the KUHD does not expressly provide the mechanism for nullity conditions or the method of rescission where hidden matters exist in entering into a contract, except that there is simply a choice of consequences that may arise, namely that the contract is null and void or the contract will not be made or will be made with different conditions, given that the incorrect or hidden matters are known beforehand. Therefore, it is clear that there is no affirmation regarding the rescission procedure due to the existence of inaccurate or hidden matters with respect to the insured party's notification regarding the contract made with the insurer. Thus, pursuant to the legal considerations above, given that the nature of a contract should provide a balanced position on the basis of the contract principles, including the conditions of freedom of contract and the need for mutual agreement between the parties, in addition to other principles, then the addressee of the norm of Article 251 of the KUHD, which is seemingly only intended to provide a warning with respect to the insured, without giving a balance of the insured party's rights to the contract made together with the insurer and thereby becoming an agreement, does not provide protection and fair legal certainty, particularly for the insured party. In this regard, if the insurer has doubt regarding the matter or conditions of the insured before entering into an agreement to be stated in a contract, particularly an insurance contracts with a special nature due to their dependence on circumstances/events that the occurrence are uncertain, the insurer should be able to consider whether they believe in the agreement that will be taken and decide to enter into the contract together with the insured, not making the norm of Article 251 of the KUHD as an instrument to protect themselves from obligations to the insured.

As in the legal considerations above, good faith is the primary condition for determining whether an insurance contract is implemented or not. Therefore, it is not justified that matters known

or discovered later are used as a reason to challenge the contract that has been agreed upon, or even to nullify it unilaterally. Furthermore, the Court also considers that insurance contracts constitute a civil law area that depends heavily on the parties' agreement. Accordingly, in the Court's opinion, where a dispute arises between the parties to a contract, this constitutes a dispute between the parties (*contentiosa*/interparties), the resolution of which is first sought through efforts to reach an agreement between the two parties or through mediation. If the resolution is not achieved, for the purpose of providing a fair, objective assessment of whether or not incorrect or hidden matters exist, even in good faith regarding the insured party, thereby the insurance contract may be declared null and void, in the Court's opinion, an assessment carried out by courts, which constitutionally exercise judicial power under the authority to settle every case in the civil (private) field as a final resolution effort (the last resort).

Pursuant to all the descriptions of the legal considerations above, the Court needs to affirm and interpret the norm of Article 251 of the KUHD. The affirmation of the norm of Article 251 of the KUHD is necessary because it does not provide protection and fair legal certainty. Moreover, the norm in Article 251 of the KUHD is a legal product of the Dutch colonial government and is outdated, and therefore does not correspond to current societal developments and legal needs. Thus, in the Court's opinion, to provide protection and fair legal certainty, the norm of Article 251 of the KUHD must be declared contrary to the 1945 Constitution and conditionally has no binding legal force to the extent that it is not interpreted as "including that any rescission of insurance contract must be subject to the agreement between the insurer and the insured or on a court decision". However, since the interpretation of the norm *a quo* of Article 251 of the KUHD differs from the Petitioner's petition, the Petitioner's argument is legally justifiable in part.

Pursuant to all the descriptions of the legal considerations above, it is clear that the provisions of the norm of Article 251 of the KUHD give rise to uncertainty regarding fair law, as guaranteed in Article 28D paragraph (1) of the 1945 Constitution, as argued by the Petitioner. However, since the interpretation of the norm *a quo* of Article 251 of the KUHD differs from the Petitioner's petition, the Petitioner's argument is legally justifiable in part.

Any other matters in the Petitioner's petition shall not be considered further because they are deemed to be irrelevant.

Pursuant to the above examination of the facts and law, the Court passes down a decision in which the verdicts are as follows:

1. To grant the Petitioner's petition in part;
2. To declare that the norm of Article 251 of the Indonesian Commercial Code (*Staatsblad* of 1847 Number 23) is contrary to the 1945 Constitution of the Republic of Indonesia and has no binding legal force to the extent that it is not interpreted as "including that any rescission of insurance contract must be subject to the agreement between the insurer and the insured or on a court decision";
3. To order the publication of this Decision in the State Gazette of the Republic of Indonesia as appropriate;
4. To dismiss the remaining petitioner of the Petitioner.