



## **Juridical Analysis between Life Insurance Company and Independent Marketing Office in District Court Decision Number: 661/Pdt.G/2021/Pn.Jkt.Sel**

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### **ABSTRACT**

*We need a financial service organisation that assists in managing and planning one's finances in order to achieve a prosperous life in society. In addition, a fair and transparent agreement is needed in arranging insurance. All companies in the financial services sector including insurance companies must be supervised by Financial Services Authority (OJK) as stipulated in Law No. 40/2014 on insurance. It is conducted to prevent potential fraud that can endanger customers. Therefore this research is conducted to find out and analyse about cooperation agreement procedure between life insurance company and independent marketing office especially the case on District Court Decision Number: 661/Pdt.G/2021/Pn.Jkt.Sel. The type of research used is normative combined with a statutory and case study approach. The research results indicate that an insurance agreement must fulfil the requirements in accordance with Article 1320 BW and the mandatory provisions of the Criminal Code Articles 250-251. Independent marketing offices that cooperate with insurance companies must always be aware in conducting agreements to prevent unwanted force majeure in the future. The legal effect of force majeure is that the defendant cannot fulfil its obligations in the engagement, but the South Jakarta District Court has determined that the defendant must pay costs, penalties and interest.*

**Keywords:** *Contract, Force Majeure, Insurance*

## INTRODUCTION

Humans are constantly engaged in their daily routines that are conducted with no intermission. Therefore, sometimes people neglect to take care of their health. There is always a possibility of personal risk. Risks can occur anytime and anywhere. These risks may cause injuries, accidents or even death. Risks are unpredictable, and humans cannot anticipate when danger might appear.

The public is becoming more educated and aware about the importance of taking precautions against unwanted incidents. They need protection that can reduce these risks due to anxiety. Insurance protection is one way to implement it. Insurance aims to cover unexpected problems and losses that occur to everyone. There is a certain belief that insurance can assume losses caused by risks whose existence cannot be determined in human life. The main purpose of insurance is to reduce the uncertainty of the occurrence of losses, especially for pure losses. Therefore, risk is also defined as the chaos of the actual events that occur and those that do not occur.<sup>1</sup>

Insurance is the intention to predict a small and specific loss as an alternative to a significant and unclear loss. It can be concluded that a person is willing to pay a small loss in the present to protect him/herself from a potentially significant loss in the future.<sup>2</sup> An insurance is referred to as an agreement in legal terms. Therefore, it should be reviewed for its understanding. The basic understanding of an agreement still includes reference to an insurance contract. The insurance contract is the distinguishing feature of various types of obligations. The agreement must fulfil the requirements of Article 1320 of the Indonesian Civil Code and the special requirements of the Commercial Code Articles 250-251. Consensus, agreement or confluence of minds must be achieved between the insured for the agreement to be valid. It means that both parties must agree on the terms of the agreement and the object of the agreement. Both parties can be legal entities, usually in the form of a business entity, or can also be individuals. The insurer is always in the form of a company whose business is engaged in insurance.

In addition, some objects are insured, such as those provided with warranty protection. There is a direct or indirect relationship between the protected object and the protected priority. A direct relationship is considered to exist if the insured owns the object. An indirect relationship exists if the insured has an interest in the object.<sup>3</sup> In order to achieve their purpose, the parties to an insurance agreement are required to act honestly. Decency and fairness are the measures to determine a

<sup>1</sup> Yaudil Hery, Hamdy Hady, and Regina J. Arsjah, "The Determinants and Implementation of Risk-Based Capital on the Financial Performance of Insurance Companies in Indonesia," *UTSAHA (Journal of Entrepreneurship)* 2, no. 3 (2023): 28–43.

<sup>2</sup> Deni Atif Hidayat and Meina Wulansari Yusniar, "Determinan Kinerja Keuangan Pada Perusahaan Asuransi," *Syntax Literate: Jurnal Ilmiah Indonesia* 6, no. 2 (2021).

<sup>3</sup> Erlinda Megantari and Indri Fogar Susilowati, "Kekuatan Hukum Perjanjian Asuransi Melalui Telemarketing Menurut Buku III Burgerlijk Wetboek (BW)," *Novum: Jurnal Hukum* 6, no. 4 (2019): 30–39.

positive purpose. This ensures the protection of each other.<sup>4</sup> Justice must be served, but promises must be honoured in accordance with norms and standards.<sup>5</sup>

The growth of various insurance products is inseparable from the increasing public interest and concern about the implications of an event that causes loss. However, many insurance companies that used to sell insurance products are rapidly changing as a result of the changing dynamics of society and the revival of the insurance sector. Nowadays, face-to-face marketing of insurance products is no longer the only distribution method.<sup>6</sup> There is also an insurance product marketing strategy that involves collaborating with banks and entering into agreements with agencies to build independent marketing offices.

In general, insurance agents operate for individuals or companies to market insurance products on behalf of insurance companies. Therefore, protection advertisers are known as protection specialists or insurance agents. The term "agent" usually refers to a legal relationship between agents in which an agent is authorised to conduct business with others. According to the conclusions of research conducted by a team of academics of the National Law Development Agency, agents purchase products from principals or obtain authorisation to sell them.<sup>7</sup>

The Financial Services Authority (OJK)'s role in insurance firms is to ensure that the insurance company has met all of its responsibilities to clients and that the company will survive. As a foundation that governs activities in the protected region, the Monetary Administration Authority can develop a monetary framework that fills in practically and stably and can foster public trust in the protection industry. To protect the interests of policyholders, the Financial Services Authority has authority over insurance businesses within the scope of insurance sector oversight. Insurance Law No. 40/2014 is fully contained in the Financial Services Authority document. For information purposes, Law No. 2/1992 has been superseded by the Insurance Law 2014. The expansion of the Indonesian economy and insurance business influenced this shift. On October 17, 2014, the then-President of the Republic of Indonesia, Susilo Bambang Yudhoyono, signed Insurance Law No. 40/2014 in Jakarta. Furthermore, Amir Syamsudin, Minister of Law and Human Rights, published it on the same day, October 17, 2014, in Jakarta. This indicates that the law became legally binding on that date.

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<sup>4</sup> David Tan, "Analisa Yuridis Pengesampingan Prinsip-Prinsip Keadilan Dan Kepatutan Dalam Proses Pengambilan Keputusan Oleh Arbiter," *Humani (Hukum dan Masyarakat Madani)* 11, no. 1 (2021): 38–56.

<sup>5</sup> Susilo Bambang Yudhoyono Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 8 Tahun 2011 Tentang Perubahan Atas Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi* (Jakarta, 2011).

<sup>6</sup> Angga Hendiarto Susanto, "Keabsahan Perjanjian Asuransi Melalui Telemarketing Dengan Perekaman Suara Sebagai Alat Bukti," *Journal Untag Sby* (2019): 1–19.

<sup>7</sup> Suharnoko, *Hukum Perjanjian: Teori Dan Analisa Kasus* (Jakarta: Kencana, 2014).

Insurance Law No. 40/2014 has its foundation in Article 5, paragraph 1, Article 20, and Article 33 of the 1945 Constitution. Here are some points to contemplate regarding Insurance Law No. 40/2014:

1. Reliable and highly competitive insurance for the protection of the clients, as well as contributing to the nation's growth.
2. In order to respond to economic developments, a new law to replace Law No. 2/1992 on Insurance Business is required.
3. Several factors shall be taken into consideration while developing insurance laws.<sup>8</sup>

In general, efforts are made to create a healthier, more reliable, trusted, and competitive insurance industry by enacting new provisions and perfecting normative regulations in the form of determining the legal basis on which it can be organized, insurance in the form of a Company, and Insurance regulations that need to be refined. If the insurance business can assist individuals in dealing with potential risks they confront daily, it will play a larger role in national development. Understanding or being known in the protection sector, specifically office environments or organizational policies of insurance agents and companies, is critical to the relationship between insurance specialists. In addition to Article 1233 of the Criminal Code, there is an additional Article 1338 of the Criminal Code that states that any arrangement other than the understanding between the two groups is prohibited from being removed.

The insurance agent's obligation to acknowledge all regulations and guidelines must be accompanied by a reasonable statement of the organization's commitments and obligations as a delegate. These responsibilities can be divided into three types:

1. Responsibility to the Directorate of Insurance, which is part of the Ministry of Finance, and responsible for regulating the insurance industry in Indonesia. The Directorate of Insurance has set minimum legal standards for agents that govern what they can and cannot do. The purpose of this regulation is to protect the interests of prospective and current clients, and agents must always follow these laws and regulations as a company representative.
2. The agent is responsible to the company within the agency contract terms with the company. Insurance businesses must conduct every business with honesty, trust, and loyalty. In compliance with the Underwriting requirements, agents are expected to provide all relevant information concerning the agent's relationship with the client, including remarks about the client's health. Agents must also sell pertinent products for the circumstances professionally and ethically.

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<sup>8</sup> Presiden Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 40 Tahun 2014 Tentang Perasuransian* (Jakarta, 2014).

3. Agents have a responsibility to current and potential clients as company representatives. They must also maintain the same professional standards as the company. Agents have a legal and ethical responsibility to keep information confidential, submit applications on time, provide proper advice, and submit policies on time. As insurance marketers, agents approach potential consumers and offer them products or services that benefit them. Agents must continue acquiring the information and abilities required to analyze data and make suitable recommendations to be effective in needs-based marketing. Agents must be aware of customized insurance products customized to fulfill certain requirements. A trustworthy relationship will be established by adapting the product to the customer's demands.

Here are some factors that have a direct impact on insurance and financial services industry behavior:

1. Willful deception or misrepresentation of a falsehood. This can cause harm to others and unfavorable benefits to oneself or others.
2. Misappropriation of client funds. This clause refers to taking money or other property from a client for a specific purpose and improperly allocating it for personal gain.
3. Forgery. The act of forgery can be delegated to deliberately creating a false record with the aim that the report is used or seems to be used as an original record or convincing others that the record is genuine, as well as doing or not doing any action.

Insurance itself has a relationship to oblige them in carrying out their work. The Indonesian Life Insurance Association (AAJI) is an organization within the insurance industry. The establishment of AAJI is intended to share and communicate information about the implementation and growth of the Indonesian life insurance industry. The public will find it easier to access reliable information with the help of AAJI. AAJI oversees the performance of life insurance companies to ensure that they provide the best service to the public under established standards. In order to maintain healthy competition among life insurance companies, AAJI also plays a role in maintaining solid marketing values.

Based on the life insurance company's cooperation contract, AAJI also plays a role in determining the extent of fault in the event of misleading violations where employees or marketing managers become a safe place. One element of the agreement is the employment contract agreement, inherent in every domestic or international business/employment relationship, regardless of its size or scope. Its function is essential if the parties are to secure business transactions, regulate the pattern of dispute resolution between the parties, and provide legal certainty for the rights and obligations of the parties. As a result, legal documents will be referred to

for dispute resolution in the event of disagreements or defects regarding the performance of the agreement (default). Therefore, an employment contract is a means to ensure the achievement of the parties' objectives, which is also called a bond.

The expression of will by the parties results in an agreement, which is then expressed through words, attitudes, and oral or written actions. Many people have used all business activities always begin with an agreement. The Civil Code Book III Chapter Two defines contract or agreement. It is often referred to as agreement in its original form.

Agreement is defined in Article 1313 of the Civil Code. This formulation is not only incomplete but also particularly broad. This formulation is considered incomplete because it only addresses unilateral agreements. By using the word "act," it covers both voluntary representations and illegal acts, making it particularly broad, as it only mentions unilateral agreements, which are incomplete, and hence considered necessary. Given this, it is necessary to improve the definition, specifically:

1. It is necessary to construe an act as a legal act, especially an act with the intention of causing legal consequences.
2. The addition of Article 1313 of the Civil Code by including the phrase "or bind oneself to each other."

As the name implies, these laws and regulations are two subfields of contract law. *Nominaat* contract law is a branch of law that examines the Civil Code's various contracts and agreements. In contrast, *innominate* contract law refers to the corpus of legal norms that examine the different contracts that have arisen, developed and existed in society. These contracts were unknown at the time the Civil Code was enacted.<sup>9</sup>

In this case, the Civil Code refers to an agreement as an act in which one or more people bind one or more other people. The legal provisions in Article 1313 of the Code are under this formulation. In general, agreements can be made in any form. The principle of freedom of contract Article 1338 paragraph 1 of the Civil Code is the legal basis for the development of insurance that develops with the community. Indeed, the variable life insurance agreement will be legally binding if it fulfills the conditions for the validity of the agreement stipulated in Article 1320 of the Civil Code: agreement with those who bind themselves, capacity to engage in a relationship, certain matters, and *halal* causes.

Based on the background of the research above, the researcher is encouraged to examine and conduct this research with the title of Juridical Analysis of Legal Protection for Independent Legal Marketing Office PT Winer Usaha Lancar

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<sup>9</sup> Azahery Insan Kamil, Pandji Ndaru Sonatra, and Nico Pratama, "Hukum Kontrak Dalam Perspektif Komparatif (Menyorot Perjanjian Bernama Dengan Perjanjian Tidak Bernama)," *Jurnal Serambi Hukum* 8, no. 2 (2015): 138–151.

Berjaya on The Cancellation of Standard Agreements at Life Insurance Company PT Sun Life Financial Indonesia.

There are two objectives of this research derived from the context of the problem and its formulation as previously explained, which are general and specific. In the context of the general objective, this research aims to examine and explain the independent marketing office cooperation agreement procedure with life insurance companies. Whereas in the context of a specific objective, this research was conducted in order to fulfill academic elements, increase the knowledge and insight of the researcher, and determine how the legal aspects of the implementation of insurance agreements and which principles apply in insurance agreements at the independent marketing office with life insurance companies, especially regarding contracts or agreements related to force majeure conditions.

## LITERATURE REVIEW

Insurance is defined as an agreement in which an insurer binds himself to an insured by collecting a premium in exchange for compensation for a loss, damage, or loss of predicted earnings that he may experience due to an incident that is not necessarily insurance or coverage.<sup>10</sup> Insurance affairs are regulated by law because it involves many parties and has significant value. Law No. 40/2014 governing insurance is the most recent insurance law. Law No. 40/2014 on Insurance regulates the following matters:

1. The extent of protection with ownership.
2. Insurance business, business license, and business administrator.
3. Cooperative management and mutual insurance business ventures.
4. Enhanced insurance, reinsurance, and *sharia* insurance coverage.
5. Protection for policyholders, participants, and insureds.
6. Career as an insurance service provider; supervision and regulation.
7. Association of insurance business.

The government and the Financial Services Authority (OJK) pledged to continue efforts to increase insurance penetration and density across the country. High penetration and density are needed to work on individual government assistance and accelerate public finance development. In addition, insurance has the potential to stabilize the capital market with high penetration and density. Therefore, due to the government and Financial Services Authority's (OJK) insistence to start cooperating with existing insurance companies to set up independent marketing offices and cooperating parties, it is necessary to start working with the insurance companies.

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<sup>10</sup> Yasmin Surya Rahmalia, "Perusahaan Asuransi Dilindungi Secara Hukum Terhadap Tindakan Klaim Asuransi Yang Disalahgunakan," *Jurnal Ilmiah Wacana Pendidikan* 9, no. 13 (2023): 649–662.

One of the sources of binding is an agreement. According to Article 1320, paragraph 1, "the agreement of those who bind themselves" is one of the conditions for the validity of an agreement. Contradictory agreements are known as contradictions in terms, and compulsion indicates that there is no limitation. The binding power of the agreement with the law of *pacta sunt servanda* is then enhanced according to the context of the parties. The agreement is obligatory with the principle of *pacta sunt servanda*. Article 1338, paragraph 1, states that people may make agreements and that the rules bind those who do so. "General provisions and decency, the words of which import all agreements, whether known by name or unknown by law," are the only forms of restriction of freedom and are at the heart of this principle. This agreement is legally binding because it is made in accordance with Article 1320 of the Civil Code. Article 1337 of the Civil Code determines whether a cause is prohibited by law or contrary to decency or public order. Article 1320, paragraph (4) of the Civil Code states that one of the conditions for the validity of an agreement is that it must be made for lawful reasons. It can be concluded that everyone is free to reach an agreement as long as it is not for legal reasons or something prohibited by law.<sup>11</sup> Both parties must agree before an agreement can be made. If neither party agrees, then there will be no agreement or person to make it. Everyone who follows the rules must understand to whom he is establishing an understanding and the conditions and status of the individual who limits himself to an understanding. This is because signing an agreement requires full responsibility from each party.

In this case, Article 1330 of the Civil Code regulates people who are considered incapable of making an agreement, including:

1. Minors. Parties are regarded to be of legal mind and age when they are married and at least 21 years old, according to Article 1330 of the Civil Code.
2. His/her guardian must represent the insurer.
3. Women (in which case, since the enactment of the Marriage Law, this regulation no longer applies).
4. Anyone who is not allowed to make an agreement by law. The person who agrees is the subject of points 1 and 2, while the subject of points 3 to 4 is the object of the agreement.<sup>12</sup>

Even if an agreement has been signed, it can still be canceled or declared null and void if the conditions are not fulfilled. The deferred party may request the completion of the contract. Under Article 1321, the annulment of an arrangement can be made for three reasons: the existence of pressure or ultimatum, the existence

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<sup>11</sup> Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian Dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107–120.

<sup>12</sup> Marilang and Putra Astomo, *Hukum Perikatan, Perikatan Yang Lahir Dari Perjanjian* (Makassar: Indonesia Prime, 2017).

of deceit, and the existence of negligence, deviation, and error. Meanwhile, according to Articles 1322 to 1328 of the Civil Code, an agreement can be terminated, especially if any coercion or fraud is identified.

## RESEARCH METHODOLOGY

This research employs a normative approach. This approach is used as a source of legal material to examine positive legal provisions and devices. Primary data is data that researchers first collected through direct field data collection. This normative legal research is conducted by looking at various legal literature materials, or what is commonly referred to as secondary data. The following methods are used in normative legal research: Legal guideline approach (resolution approach or statutory approach), which aims to analyze all regulations more specifically, and a Case study, where the Court has decided it. Non-legal studies can be used to complement the mentioned approaches rather than as an attempt to explain legal reality as a scientific endeavor. Non-juridical disciplines that may seem useful to explain the application of a non-law perspective are merely a means to assist in the development of the analysis.

The sources of legal materials used in this normative legal research are legal materials consisting of two legal materials, primary legal materials and secondary legal materials. Primary legal materials include laws and court decisions. Meanwhile, secondary legal materials consist of various scientific works, research reports, dictionaries, legal research journals, online articles, and others related to the research topic. The criteria for compliance with the formulation of problems and research topics were used to classify all legal materials, which were then analyzed. Assessment and descriptive-analytic methods are used to analyze legal materials.

## RESULT AND DISCUSSION

Insurance is referred to as an agreement in legal language. As a result, the agreement itself must be reviewed for understanding. Insurance agreements must meet the requirements of article 1320 of the Criminal Code and the mandatory provisions of the Criminal Code, Articles 250 and 251. The insurer is always a company whose business is engaged in insurance. If the insured owns the object, it is considered that there is a direct bond. The parties to the insurance agreement must act honestly in achieving their goals; the measure of good faith is reasonableness. This is intended to protect the rights of one of the parties so that each has a balance of interests. In implementing cooperation in the insurance field, the Independent Marketing Office, in collaboration with insurance companies, must always be vigilant in conducting agreements, especially if there are undesirable Force Majeure conditions in the future.

Force Majeure during the agreement does not merely occur because and not something that is desired by one of the parties. This condition occurs because of the fulfillment of an element under the law's rules. No future events can be recognized or predicted when an agreement is reached. Therefore, no one is to blame for this event. In this research, researchers have discussed the causes of this pandemic which are used as a basis for changing and/or canceling the agreement, given the Covid-19 crisis that is happening in the world when this agreement takes place. The element of force majeure in the agreement has fulfilled the applicable laws and regulations requirements, namely Articles 1244 and 1245 of the Civil Code regulating force majeure. The application of the principle of *pacta sunt servanda* in Article 1338 of the Civil Code is limited by this article. Article 1244 of the Civil Code reads as follows: If there is cause for it, the debtor shall be liable to reimburse costs, losses, and interest if he cannot prove that it was not or was not done at the right time due to something unexpected. While Article 1245 of the Criminal Code is: There is no reimbursement of costs, loss and interest. If, due to force majeure or because of things that happen by chance, the debtor is prevented from giving or doing something that is required or doing an act that is prohibited for him.

The legal effect of this force majeure is that Defendant could not implement its agreement in the binding. However, a provision was imposed by the South Jakarta District Court to continue paying costs, damages and interest. As long as it is true that the activities cannot be carried out, it is considered that Defendant cannot do anything about the constrained conditions and all kinds of defaults/illegal activities that it has carried out. The Judge clearly believed that the sincerity or good faith of the Defendant was not an element to alleviate the verdict against the Defendant.

## CONCLUSION

When there is any agreement in any case, we must strictly follow all applicable rules under the law. When making a contract, both parties are stated in the agreement. They must fulfill three legal principles, the principle of legal certainty, the principle of justice, and the principle of legal expediency. The force majeure clause in the contract has become a general provision that must be present in every contract, especially with the occurrence of the circumstances as mentioned earlier, as stated earlier. In analyzing the Judge's decision, the researcher argues that the Court did not impose a fair verdict based on the legal facts of the Plaintiff's claim to impose a verdict on the Defendant in the *a quo* case. It would have been better if the Judge had taken more consideration of the force majeure situation since COVID-19 is a force majeure situation as stated in Presidential Decree No. 12/2020 concerning the Determination of the 2019 Corona Virus Disease (Covid-19) Non-Natural Disaster as a National Disaster, making the Defendant unable to carry out what has been agreed as in the agreement.

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