

DISPUTE RESOLUTION

Insurance Companies Can No Longer Use Utmost Good Faith Principle to Unilaterally Cancel Policies



The Indonesian Constitutional Court recently issued a landmark decision affecting the insurance industry. In its Decision No. 83/PUU-XXII/2024 (“**Decision**”), the Court ruled that Article 251 of the Commercial Code is conditionally unconstitutional. This Article is widely recognised as establishing the principle of “utmost good faith” in Indonesian insurance law. This principle requires both the insurer and the insured to act with complete honesty and transparency throughout the insurance process.

Chief Justice Suhartoyo, when reading the verdict, stated that Article 251 of the Commercial Code “is in conflict with the 1945 Constitution of the Republic of Indonesia and has no binding legal force” unless it is interpreted to require that “a court must approve any agreement between the insurer and the insured to cancel a policy.”

Here are the key takeaways from the Decision:

1. **Clarity on cancellation of insurance policies**

The Court found that Article 251 of the Commercial Code can potentially lead to multiple interpretations on how an insurance policy can be cancelled. The Article only states that an insurance policy *can* be cancelled if there is incorrect or false information, but does not explain *how* that cancellation should happen.

2. **Balanced rights of the insurer and the insured**

As contracts, insurance policies need to be fair to both sides. Article 251 of the Commercial Code did not give the insured the right to challenge accusations of providing incorrect or false information. The Court clarified that both the insurer and the insured must first try to resolve any disputes through the process outlined in their insurance contract. If they fail to agree, then the court (or an arbitration tribunal) can decide if the insurance policy should be cancelled. The Court emphasised that insurers have a responsibility to carefully assess information *before* issuing a policy, rather than relying on Article 251 to avoid paying claims later.

3. **Outdated law**

The Court recognised that Article 251 of the Commercial Code is an old law from the Dutch colonial era. Thus, it is no longer in line with society’s needs and does not provide fair protection or legal certainty for people today.

This decision has significant implications for insurance practices in Indonesia. We take a closer look at what this means for insurers and policyholders.

Impact on the Underwriting Process

The principle of utmost good faith means that customers (the insured or policyholder) must be completely honest and transparent when applying for insurance. They need to disclose all important information about the insured object and any pre-existing conditions. This information is crucial for the underwriting process, where insurers evaluate the risk and decide whether to provide insurance, and if so, the premium and policy terms.

Because it is now harder to cancel a policy due to inaccurate information, insurers will need to be more thorough in their underwriting process. The Court emphasised that insurers have a responsibility to actively verify the information provided in applications, rather than simply accepting it at face value. Insurers should consider potential errors, both intentional and unintentional, made by customers or their agents during the application process.

Implications for Insurance Claims

It is important to note that the Decision does not directly address whether an insurer can still reject a claim due to a violation of the utmost good faith principle. This means that there is some uncertainty in this area.

However, it is likely that insurers can still reject claims based on a violation of the utmost good faith principle provided that:

1. The insurance policy itself is not cancelled;
2. The claim is directly related to information that the customer did not disclose when applying for the policy; and
3. The insurance policy specifically states that the insurer has the right to reject claims in these situations.

Customers whose claims are rejected can challenge that decision through the dispute resolution process outlined in the insurance policy.

Conclusion

Following the Decision, insurance customers can expect stricter underwriting processes and clearer guidelines regarding policy cancellation due to violations of the utmost good faith principle. Indonesia's financial services authority, the OJK, is expected to issue regulations or directives to implement these changes.¹

It is important to remember that customers still have an obligation to fully disclose all relevant information about the insured object and pre-existing conditions. Any false information or concealment of facts could result in claim rejection, potentially leaving the customer without coverage.

¹ <https://finansial.bisnis.com/read/20250107/215/1829662/ojk-perintahkan-asuransi-perbaiki-polis-setelah-mk-tetapkan-pasal-251-kuhd-inkonstitusional-bersyarat>

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