

THE INCORPORATION OF EXONERATION CLAUSES IN INSURANCE AGREEMENTS: LEGAL CONSIDERATIONS AND IMPLICATIONS

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ABSTRACT

This article examines the inclusion of exculpatory clauses in insurance contracts and related legal issues. The inclusion of these clauses, which release insurers from liability, raises serious questions about the power dynamics between insurers and insureds in Indonesia. In order to understand how general and specific laws governing insurance contracts interact, the research examines relevant legal provisions from the Commercial Code, the Civil Code, and the Consumer Protection Law. In particular, the applicability of general civil law provisions in the absence of specific provisions is highlighted through the principle of *lex specialis derogate lege generalis*. It also discusses the impact of standard contracts on freedom of contract and possible limitations on the rights of the insured, as well as the impact of unilateral insurance policies issued by companies. Given the potential vulnerability of individuals and small businesses, the study emphasizes the need to balance the interests of insurers and insureds. The study suggests that policymakers and attorneys continue to pay close attention to the complex legal issues surrounding exculpatory clauses in order to protect the rights of insureds.

KEY WORD: exoneration clauses, insurance agreements, legal considerations,

INTRODUCTION

Exoneration clauses in insurance contracts have received a lot of attention from the legal community. According to [Ranuhandoko \(2013\)](#), exoneration is the act of giving someone freedom to avoid obligations and demands. The clause basically states that the party that determines the terms of the contract, the insurance party as the insurance company, is not responsible or accountable ([Guntara, 2016](#)). Exoneration clauses are legal provisions that relieve a party from responsibility

for certain acts or omissions. They are also referred to as limitation of liability clauses or exoneration clauses. In the context of insurance, these clauses are often used by insurance companies to limit their liability, protect their interests, and spread the risk among the parties. Due to the imbalance between the insurer and the insured, the insured has strongly insisted on the agreement to transfer liability. An exemption, which is essentially a contractual obligation or responsibility in a standardized agreement, limits liability ([Windiantina, 2020](#)). Article 1337 of the [Indonesian Civil Code \(KUHPerdata\)](#) stipulates that the standards of decency and public order must be followed when entering into agreements; however, this discretion may even supersede the rules of KUHPerdata or what is known as the "openbaar system." The validity or invalidity of an agreement that arises to bind or apply as law to the contracting parties is currently the subject of debate and confusion among legal experts ([Njatrijani, 2012](#)). A contract between the insurer and the insured relating to insurance is usually outlined in the form of an insurance policy. The exoneration clause is outlined in the model contract, and if examined based on the legality of the contract as defined in Article 1320 of the [Civil Code](#), it has implications for the legality or nullification of a contract due to the loss of the meaning of the contract as one of the legal conditions of a contract. The existence of an exoneration clause renders the agreement null and void if it is reviewed in accordance with the Consumer Protection Act No. 8 of 1999 ([Zakiyah, 2017](#)).

An exoneration clause may expressly relieve the economic operator from liability for losses resulting from the application of the agreement. Exoneration clauses may have been drafted by a business actor acting alone, or they may have been drafted as a result of legislative requirements. Exoneration clauses drafted by business actors require consumers to prove their innocence, which makes them difficult for consumers, who often lack evidence. Unlike exoneration clauses that result from legislative formulation, the burden of proof is placed on business actors to prove their innocence in order to be released from liability ([Syamsudin and Ramadani, 2018](#)). Undoubtedly, this is very detrimental to the insured because it does not balance the rights of the insured with those of the insurer. It is important to analyze this type of issue, as it could lead to the loss of validity of the insurance contract. However, the combination of the two raises significant legal issues and may have consequences that require careful consideration and scientific research.

The legal framework for the inclusion of exoneration clauses in insurance contracts is made up of a variety of laws, regulations, case law and contractual principles. One of the fundamental factors to be taken into account is the doctrine of freedom of contract, which recognizes the autonomy and freedom of the parties to conclude agreements on their own terms. However, this rule is not without its limitations, as courts impose restrictions for the protection of equality, fundamental rights and public policy. Courts often review exoneration clauses to ensure that they meet legal standards of fairness and reasonableness to avoid unfair results. Interpreting and determining whether exoneration clauses in insurance policies are enforceable is a challenging task that requires careful analysis. Courts use a variety of methods to interpret and construe these clauses. These include the *contra proferentem* rule, the doctrine of reasonable expectations, and the principle of strict construction. In addition, jurisdiction-specific elements, such as statutory requirements, public policy considerations,

and the nature of the business relationship, affect the enforceability of exoneration clauses.

Furthermore, public policy considerations are critical in assessing the legality and enforceability of exculpatory clauses. Courts often determine whether the inclusion of such clauses would jeopardize fundamental societal interests, threaten public safety, or produce unfair results. Insurance has a duty to protect policyholders and promote justice as a regulated industry. As such, exoneration clauses in insurance contracts are often evaluated in light of public policy issues, and courts have a history of invalidating or limiting the scope of these clauses when they are found to be unlawful. Both the insurer and the insured are affected by exoneration clauses in insurance contracts. From the insurer's perspective, these clauses provide an opportunity to reduce its premium costs and liability exposure. However, the existence of an exculpatory clause may leave the insured, particularly individuals or small businesses with little bargaining power, vulnerable and unable to seek full compensation for losses suffered. The fairness and accessibility of insurance coverage are now subject to ethical and social concerns. This paper critically examines these implications and provides insights into how to balance the rights of policyholders, public policy, and the interests of insurers.

METHODOLOGY

In this article, normative research is used where legal norms serve as the primary framework for both legal theories and legislation. This is also in line with [Marzuki's \(2014\)](#) assertion that normative jurisprudence is based on legal norms related to the subject of this research, in order to arrive at a coherent truth. The analysis is also conducted through the use of a standardized agreement on insurance contracts with exculpatory clauses, as well as the legal implications of including an exculpatory clause in the insurance policy. This research methodology uses both a legal approach and a conceptual approach. The method of collecting legal materials is carried out by analyzing and identifying legal materials, especially laws and regulations, books, journals, and other literature sources, as references that can be accounted for. In the technique of analyzing legal materials, the deductive method is used. In this method, the beginning of the process is a general statement, the description of the statement is more detailed, and then the conclusion is drawn ([Marzuki, 2014](#)). The Indonesian Civil Code, laws, and regulations that serve as the basis for the discussion of this study were used in the analysis.

RESULTS

Insurance companies have an obligation to protect their customers through the provision of insurance coverage. In this situation, premiums are collected from policyholders in exchange for the transfer of risk. The insurance contracts concluded between the insurance company and the policyholder form the basis for the payment of premiums. It is crucial that the legal guidelines of the Civil Code and the Commercial Code be observed in the preparation of an insurance contract. These guidelines require mutual consent and notification of the subject and object of insurance.

The contract must contain a consensual element to ensure that the rights and

obligations of the insurer and the insured are equal. In reality, however, insurance companies often use pre-written contracts with indemnity clauses that limit their liability and put their own interests first. This may lead to an abuse of the stronger position of the insurer and may be seen as a restriction of the principle of freedom of contract. An agreement cannot abuse the situation or bargaining position of a party; this would be a breach of the good faith of the parties. Although the Civil Code does not explicitly recognize the abuse of circumstances or bargaining power, court decisions have established that such abuses may render an agreement void. The legality of an agreement is determined by its compliance with the conditions set forth in Article 1320 of the [Civil Code](#), which include the consent of both parties, the legal capacity of the parties and the legality of the subject matter.

Insurance contracts require the insured to provide details about the insured property in order to mitigate risk. In order to avoid losses caused by exculpatory clauses, it is crucial to include this requirement in the contract, as this information is under the control of the insured. In addition, the use of exculpatory clauses and boilerplate agreements can lead to an imbalance of bargaining power and the loss of important contract terms. Insurance contracts require the insured to disclose information about the insured property in order to mitigate risk. It is important to include this clause in the contract because the insured has control over this information and exculpatory clauses can result in losses. Exculpatory clauses and standardized agreements can also lead to unfair bargaining positions and the loss of key contract terms.

The guiding principles of the Civil Code should be taken into account when negotiating insurance contracts. Consensus, freedom of contract, binding clauses, trust, legal equality, balance, legal certainty and good faith are some of these principles. They aim to ensure fairness, equality and the fulfilment of obligations between the parties to the contract. Exoneration clauses in insurance contracts raise a number of legal issues and implications. Insurance companies may use standardized contracts for administrative convenience, but their inclusion shouldn't result in the violation of a party's rights. In order to protect the rights of the insured, it is essential that insurance contracts uphold the ideals of justice, equality and good faith. The following are some of the intricate legal considerations that are covered in this advanced analysis of these clauses, which draws on extensive research to do so:

Limitations on freedom of contract: An important research finding is the limitation on freedom of contract in the inclusion of exoneration clauses in insurance contracts. Although the doctrine of freedom of contract recognizes the autonomy of the parties to negotiate terms, courts have established specific limitations to protect public policy, fundamental rights and equitable principles. Exoneration clauses are subject to judicial review to ensure that they meet legal standards of reasonableness and fairness and to prevent unconscionable results.

Interpretation and construction of exoneration clauses: According to research, the interpretation and construction of exoneration clauses are critical in determining whether or not they are enforceable. Courts use a variety of methods to determine the intended scope and effect of these clauses, including the contra proferentem rule, the doctrine of reasonable expectations, and the principle of strict construction. Understanding how courts evaluate the enforceability of exoneration clauses in insurance contracts is essential to understanding these

interpretive principles.

Jurisdiction-specific factors and enforceability: Exoneration clauses in insurance contracts may or may not be enforceable depending on local laws. Research indicates that the enforceability of a contract depends on several factors, including statutory provisions, public policy considerations and the nature of the contractual relationship. Exoneration clauses may be subject to special rules in some jurisdictions, particularly when it comes to protecting groups with less bargaining power, such as consumers or employees.

Public Policy Considerations and Judicial Intervention: Courts often consider whether including these clauses would undermine core societal values, threaten public safety, or produce an unconscionable result. Cases where courts have intervened to invalidate or limit the use of exoneration clauses deemed against public policy, particularly where there is an issue of essential services or where there is an issue of unequal bargaining power.

DISCUSSION

Insurance is defined and regulated by Article 1 of the [Insurance Act](#) and Article 246 of [the Commercial Code](#). According to the principle of *lex specialis derogate lege generalis*, specific provisions (such as those in the Commercial Code) prevail over general provisions (such as those in the Civil Code). However, the provisions of the Civil Code still apply if the contract is not covered by the Commercial Code and the Civil Code does not specifically deal with insurance. When drafting an insurance contract, Article 251 of the [Commercial Code](#) and Article 1320 of the [Civil Code](#) should be observed. A standard contract with an exoneration clause is commonly used by insurance companies. This provision gives the insured the opportunity to accept or reject the policy issued by the insurer. By accepting, the insured agrees to all the terms and conditions. The insurer is in control of this freedom, which could interfere with the principle of freedom of contract. Losses caused by the exoneration clause may be borne by the insured and recovery of damages may be difficult ([Sunarmi, 2012](#)).

In Indonesia, Article 18 of the [Consumer Protection Law](#) regulates "standard clauses commonly used in contracts". Such clauses are prohibited under certain circumstances and are punishable by imprisonment or fines ([Muaziz et al., 2015](#)). [The Financial Services Authority Act](#) regulates exculpatory clauses and exemptions, and prohibits clauses that increase the rights of companies or decrease the rights of consumers. Insurance contract regulations in Indonesia do not prohibit the inclusion of an exculpatory clause as a standard clause in an insurance policy. However, insurance companies are prohibited from using such clauses if they violate the provisions of the Consumer Protection Law. The Consumer Protection Law outlines the various rights and responsibilities that consumers have when conducting transactions.

Exoneration clauses that are detrimental to consumers are expressly prohibited by Law No. 8 of 1999 on Consumer Protection. Consumers must file a lawsuit to have an exoneration clause removed from a standard contract, even if it is void. Exoneration clauses in contracts should never be abused, and courts should always defend the interests of consumers, who are usually the weaker party in legal disputes. The primary goal is to strike a balance between the interests of insurance companies and the insured. Exoneration clauses give insurers the

opportunity to limit their liability and perhaps reduce premium costs. However, attention has been drawn to the vulnerability of insureds with less bargaining power. When exoneration clauses limit the ability to seek full compensation, it sparks a larger discussion about the fairness and accessibility of insurance coverage. Exoneration clauses in insurance contracts have moral implications that cannot be ignored.

CONCLUSION

Exoneration clauses in insurance contracts are a complicated subject in Indonesia that is governed by a number of different laws. These provisions, which are frequently found in standard contracts, give insurance companies the authority to set the terms of the policy, potentially limiting the insured's ability to pursue full compensation. Although harmful clauses are prohibited by the regulatory framework, particularly the Law on Consumer Protection, contesting them may require legal action. Given the vulnerability of individuals and small businesses, it is critical to strike a balance between the interests of insurers and the insured. To ensure equity and accessibility in insurance coverage, policymakers and legal professionals should keep addressing the implications going forward.

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