

DIGITAL INSURANCE CONTRACTS IN INDONESIA: POTENTIALS AND CHALLENGES

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ABSTRACT

This article analyzes the potential and challenges associated with the development of digital insurance contracts in Indonesia, and explains the importance of regulation to protect customers and maintain the sustainability of this development. Digital insurance contracts have the potential in terms of operational efficiency, wider accessibility for customers, and increased transparency in the offer of insurance products. With faster and more automated administrative processes, insurance company operating costs can be reduced, providing added value for customers in the form of more affordable premiums. Digital insurance contracts also provide greater accessibility benefits, especially for communities in remote areas that are difficult to access by conventional insurance companies. Through descriptive research and literature analysis, this article provides in-depth understanding of the development of digital insurance contracts in Indonesia. However, there are challenges related to the protection of customer personal data, data security, and the legal aspect. Regulation is needed to ensure that insurance companies and third parties comply with established privacy and security standards, and to provide legal certainty for all parties involved in digital insurance contracts.

KEY WORD: Insurance, insurance contracts, digitalization, data protection, legal regulation

INTRODUCTION

Every choice a man takes throughout his life. The risks are numerous. Risk is the potential for losses to be incurred and resulting dangers that may materialise but are not known in advance whether or when they will.(Purba, 1992). The

confidence of the public as its consumers in the era of globalisation and modernization has led to the fact that many individuals no longer wish to endure the risk of losses that can occur unpredictably; the threat of loss can be the destruction or loss of wealth, soul, or body. In order to shoulder this responsibility, insurance companies are located in the heart of the community. Following the economy's growth, society's capacity to pay insurance premiums increased alongside the expansion of insurance businesses. Today, the industry is developing various insurance products, including loss, life, education, and health insurance. Insurance has numerous advantages (Sastrawidjaja, 2010), including: 1) assisting the community in overcoming all its risks. It will bring more tranquilly and confidence to those involved. 2) To mitigate the hazards associated with implementing the development. In addition, despite the fact that there are numerous methods for risk management, insurance is the most commonly used method because it protects the responsible party from individual and corporate risks.

Insurance is no longer unusual to Indonesian society, as most Indonesians have already signed contracts with state-owned and national private insurance firms. The liability is a mutual agreement between the insurer and the insurance cover, in which the insured agrees to replace the losses or pay a specified amount of money at the time of closing. The contract, at the time of the event, to the insurer or other designated party, while the insurance company is obligated to pay the premiums (Purwosutjipto, 1978)

Insurers continue to innovate in response to ever-changing technological developments. In insurance companies, digital technology alters how a business operates. This is evidenced by the transition in insurance marketing trends towards the Internet, web portals, and online applications, also known as digital insurance. Mutual Insurance Digital in general, refers to a variety of products and not a single product; the insurance products offered can also be purchased online, either through a web portal or online applications that can be accessed using computer or smartphone media, so long as such media is connected to the Internet network. In addition, digital insurance payment methods support debit cards, credit cards, and the Internet banking system, allowing transactions to occur anytime and place.

Internet-based commercial transactions are referred to as electronic or digital transactions. (Electronic commerce transactions and e-commerce). In general, e-commerce is divided into two segments: business-to-business e-Commerce or B2B, which is business through the internet between entrepreneurs, and business to consumers e-commerce or B2C, which is business through intensive media between businesses and consumers (Zein, 2009). The principle of contract freedom also contributes to using the Internet as a medium for contract formation. With such a foundation, the parties can determine any form or format, whether written, oral, scriptless, paperless, etc., and the agreement's content according to their preferences (Hernoko, 2010). In addition to these principles, one of the implications of developing information technology that facilitates human existence in business transactions is the creation of agreements through Internet media. As an example in a simple case, consider the online purchase of airline tickets accompanied by the offer of travel insurance (travel insurance), which necessitates the conclusion of the insurance contract via the Internet. In a more complex example, an insurance agreement is made to cover the risk of

maritime transportation of goods, which is a transnational business transaction. It is possible to enter into insurance agreements with foreign insurance companies, which is not uncommonly accomplished via the Internet.

Insurance is one of the most common forms of insurance agreements. The development of business and the economy have also acknowledged the significance of insurance. Individuals and businesses have benefited from sharing risk associated with an ambiguous possibility (Ganie & SE, 2023). Since the colonial era of the Netherlands (in the *Wetboek van Koophandel / KUHD*) and Law No. 2 of 1992 on Insurance Enterprises, insurance arrangements have been conducted in Indonesia. Article 246 of the *KUHD* is the first legal foundation for insurance in Indonesia to define insurance itself.

There are doubts about the legal certainty of internet-mediated insurance contracts, despite the convenience and benefits associated with their construction. There will be a number of legal complications due to the implementation of contractual aspects of internet-based insurance agreements. From the perspective of contractual/civil contractual law, it will be more difficult to analyze the subjective requirements of an agreement's legal terms, i.e. the agreement and the contract, when they are implemented via the Internet.

The issue that digital insurance offenders frequently confront is determining with whom they conduct business and whether their opponent has the authority to commit a legal act. Without prior meetings between the parties, it is quite difficult for one party to determine the competence of the other in Internet-based transactions. Transactions conducted via electronic media must adhere to the technical specifications outlined in the governing statutes. Establishing insurance contracts between the insured and the online insurance company raises legal issues regarding using online policies as proof of the existence of an insurance contract between the insurer and the insurance company.

METHODOLOGY

The research method The author's methodology combines a legislative and a conceptual approach. The legislative approach is a problem-solving method that examines all laws and regulations pertinent to legal issues (Marzuki, 2017). When applying these approaches to a problem, one thing to keep in mind is the need to comprehend the hierarchy and related foundations of applying legislative regulations. A conceptual approach is an emergent approach to the evolving doctrines and perspectives in legal science, which produces legal comprehension, legal concepts, and legal foundations pertinent to the legal problems at hand.

The techniques for collecting primary and secondary legal materials are learned through library research. This study collects primary legal materials by investigating the provisions in the regulations of legislation that regulate pertinent issues. Comparatively, secondary legal materials are collected by examining the sources of such legal materials, namely literature and laws and regulations, and are compiled in accordance with the research problems.

RESULTS

Trade Electronics provides merchants with opportunities by reducing fees. It also facilitates the store's expansion. The vendor is not required to construct a

structure, Employ employees, or administer the ending of a business. Order and Report Finances are managed by implementing a unique system to minimize additional expenses. The Internet has proved to provide buyers with a variety of access points, but not without dangers. The same criminal actor can breach the system security surrounding the Internet. The situation facilitates the concept of developing a method and employing technology to safeguard e-commerce sales. The encryption. Additionally, e-commerce distributors are expanding. This technology is known as Secure Electronic Transaction or Secure E-Transaction. Configuration of the same Master Card and Visa. Rapid growth in e-commerce is gradually altering how consumers purchase products and services. The expansion of Internet-based e-commerce is widely observed (Setyawan & Wijaya, 2018).

The use of information technology allows for non-face (no face-to-face), non-sign (no use of an actual signature), and borderless (one can conduct an electronic transaction with another party even if they are in a different country) transactions. Technology's convenience makes electronic transactions grow quickly. It has expanded to include commerce in services as well as goods. Information technology is used in the insurance industry to create electronic policies or e-policies. E-policy is a contract-containing electronic insurance policy document that is distributed to customers by insurance companies.

According to Law No. 40 of 2014 on Insurance, an insurance contract is a legal arrangement between an insurance company and a policyholder. A liability contract is an insurance policy between the insured and the insurer. To combat uncertainty, people often need protection or insurance guarantees. Risks associated with uncertainty can endanger all parties, including both individuals and. The hazards can be caused by riots, acts of sabotage, and acts of terrorism, as well as by natural catastrophes, accidents, diseases, negligence, incapacity, mistakes, and failures.

Insurance contracts are extremely specific because only the insurer (the insurance company) signs them, but they obligate the insured. The insurance company typically formats the agreement's contents as something fresh or standard. In actuality, conflicts frequently arise between the bearer and the carer. An insurance contract is a delicate agreement. This is due to the fact that the subject of the agreement is ambiguous.

The recognition of electronic contracts as a type of contract in the Indonesian Perdata Law Book (KUH Perdata) remains a peculiar issue. Article 1313 of the Convention on the Definition of Agreement does not require a written agreement. Article 1313 of the United States Constitution defines an agreement as an act by which two or more parties bound themselves to one or more others. This means the policy must be in writing, but the rapid development of technology has led some insurance companies to offer e-policies to attract customers. The transactional capabilities of the Internet are extraordinarily advantageous to both insurance companies and customers.

The most recent regulation related to Insurance Law 40 of 2014 does not define the Police. The understanding of the authorities is exclusive to the Commercial Law book. Some insurance companies in Indonesia have marketed epolicies despite the lack of a distinct legal framework governing their existence. E-policies are published by some insurance companies in Indonesia primarily due to the reduction of operating and publishing costs.

The competent Legislative Body has been discussing the draught Law on

Electronic Information and Transactions since 1999; ultimately, Indonesia has the legal framework to regulate the issue with the passage of Law Number 11 of 2008 on electronic information and transactions on April 21, 2008. However, the law does not regulate e-police specifically.

An electronic policy, or e-policy, is an insurance contract resulting from an electronic commercial transaction. There have been numerous electronic transactions in the modern era. It encompasses not only the trade of commodities but also the trade of services via electronic transactions. Electronic transactions are used to administer the insurance policy. The benefit of electronic policies for consumers is a reduction in time and expenses, while the benefit for insurance companies is a reduction in operating expenses.

The publication of e-police differs less from the publication of police in general. Nonetheless, there are some distinctions. The first distinction is that at the time of purchase, the consumer does not receive an explanation from marketing but rather relies on the website's description of information. The second distinction relates to the underwriting procedure. Underwriting is a method. Risk assessment. A risk analysis is performed to determine the prospective premiums to be paid by the subject. (tergantung seberapa besar risiko yang dimiliki oleh tertanggung). Following this, the final step will occur. The dissemination of insurance policies. When the police are typically printed and sent to the responsible party via courier, the completed e-police will not be printed but sent to the respondent via email during the publishing process. The dossier of a police officer is sent to the officer in digital format. Essentially, e-policing is a form of a contract governed by Article 1313 of the KUH Perdata: "*A contract is an act by which two or more parties bind themselves to one or more parties.*"

Agreement or agreement It is a type of agreement (overeenkomst) that seeks to create a situation in which the parties reach a deal or accomplish a goal. An agreement's parameters can be determined through an offer and acceptance procedure. To explain the validation of e-police agreement actions, we begin with the validity theory. The term legitimacy is derived from the English word legal. The law is the basis for the Oxford Dictionary (O. E. Dictionary, 1993). While in Black's Law Dictionary, the Legal meaning of relating to law, established, required or permitted by law, of or relating to law as opposed to equity (B. L. Dictionary, 1990). According to the law, the Indonesian language can be interpreted. This indicates that the legal term is interpreted in accordance with the legal provisions.

Article 1320 of the KUH Perdata outlines the conditions that must be met for a contract to be considered valid under Indonesian civil law. In order for an electronic insurance contract to be considered valid under Indonesian law, the agreement must satisfy these conditions. In addition to the valid terms of the agreement outlined in Article 1320 KUH Perdata, there are also the terms of the insurance contract based on KUHD Trading, as the insurance contract has unique characteristics. According to Article 246 of the KUHD, "Insurance or liability is an agreement whereby the insured is bound to the liable by obtaining a premium to provide him with compensation for a loss, damage, or failure to obtain an expected profit that may be incurred as a result of an uncertain event." In addition, Article 255 of the KUHD stipulates that "the suspension must be made in writing with an act that names the police."

The rapid development of information technology and the insurance industry has

created new problems that cannot be solved solely with KUHD because such information technology did not exist then. Today, the world of electronic police insurance is expanding. With the existence of this electronic police, the process of creating the police will be quicker and less difficult for customers. The meaning of *"Tulis"*, according to the major dictionary of the Indonesian language, is that there are letters (number, etc.) made with a pen (pensile, paint, etc.); written (which has already been approved); that there is writing: a charter in the form of copper. Scripture is Scripture, and Scripture is Scripture. According to the Black's Law Dictionary, "A "written contract" is one which in all its terms is in writing. Meanwhile, writing, according to the Black's law dictionary, is: "In the most general sense of the word, "writing" denotes a document, whether manuscript or printed, as opposed to mere spoken words. Writing is essential to the validity of certain contracts and other transactions."

As the opposite of a spoken term, "writing" in its most common usage, refers to a written or printed document. Certain contracts and other transactions require the use of writing to be valid. Therefore, the written meaning specified in Article 255 of the KUHD, "The contract must be made in writing with an act, which is given the name of the police" is the written meaning (*hitam diatas putih*). It is common knowledge that a document may be handwritten or printed. Something that has been handwritten or printed on paper. Moreover, given that KUHD is a legacy of the Dutch government that is still in effect, it is reasonable to assume that the written understanding meant in KUHD Trading was written in black ink on white paper because electronic media did not exist then.

Based on the above-written interpretation, insurance contracts using e-police can be interpreted as violating the law, Article 255 of KUHD, because the e-police used in the insurance contract does not conform to the written meaning intended by KUHD. Consequently, the fourth law is not valid even though the law of treaties in Indonesia is founded on contract freedom. (Pasal 1338 KUHPERDATA). In this instance, any party may readily enter into an agreement if its terms are not contrary to applicable legal principles and do not violate common law and order. (lihat Pasal 1337 KUHPERDATA). While the insurance contract utilizing e-policies is contrary to KUHD, which is equivalent to the law, it is still valid. Unfortunately, the insurance contract cannot satisfy the objective conditions of a contract, which may render the contract void under the law.

Based on the above-written interpretation, insurance contracts utilizing e-police can be construed as non-compliant with the law, namely Article 255 KUHD, because the e-police used in the insurance contract does not conform to the written meaning intended by KUHD. The fourth law is, therefore, unconstitutional despite the Indonesian law of contracts being based on the principle of contract freedom. (Article 1338 KUHPERDATA). In this instance, any party to the agreement may readily enter into a contract if its terms are not contrary to applicable legal principles and do not violate common law and public order. (Article 1337 KUHPERDATA). Despite the fact that the insurance contract using e-policies violates KUHD, which is equivalent to the law, the use of e-policies is permissible. Unfortunately, the insurance agreement cannot meet the objective conditions of an agreement, which may render the agreement null and void. See Article 257, paragraph (1) of the KUHD, which states that the liability agreement is already in effect prior to the execution of the police. This indicates that the agreement was reached by consensus. According to the concept of

consensual consensus, an agreement between two or more parties has been solidified to the point where it has given birth. The obligation of one or more parties to such an agreement as soon as an arrangement or consensus has been reached, even if the agreement has been reached verbally. In principle, the agreement is binding and valid as an alliance between the parties, with no formalities required. However, written confirmation of the agreement's existence is required to protect the parties interests.

In practice, the insurance company's contract with the insured is not a valid claim unless the insurer can provide a copy of the policy or cover note. If the insured submits a claim without providing written proof of the insurance policy, it will be difficult to establish the existence of the agreement made with the carrier. Therefore, it is necessary to prove in writing that a deal has been reached.

According to what is stated in the KUHPerdata, the e-policies-using insurance contract has essentially met the legal requirements of the contract. Nonetheless, the e-policy does not adhere to Article 255. Insurance is a business of trust. This agreement cannot be reached without the mutual trust of both parties. The coverage of a new insurance contract is valid if it is based on good faith. (Pasal 251 KUHDagang). A contract for insurance is contingent on the occurrence of an uncertain event, so good faith and mutual trust between the parties are crucial. In order to protect the parties' interests in the event of a dispute in the future, it is crucial that an insurance contract be drafted in writing.

In addition to entering into insurance contracts for one's own benefit, Article 264 of the Civil Code allows parties to enter into insurance contracts for the benefit of third parties, either with their consent or without their knowledge. The party responsible for carrying out the insurance contract terms has rights and responsibilities. It must be carried out so that when an unanticipated event occurs, and the police's conditions are secured, the responsible party can carry out his responsibilities. Therefore, the presence of police in the insurance contract is crucial.

Insurance contracts are typically drafted by the insured, and insurance companies frequently rely on contracts drafted by companies. The reasons for Consensus Standard in the insurance contract are to reduce the duration and streamline the contract's form. Unnecessary to shoulder It is difficult to consider the arrangement. Nonetheless, the existence of unedited contract agreements has resulted in numerous consumers being harmed by contract clauses.

On the basis of such consumer weaknesses, there is a need for a robust legal framework that can be used to empower consumers, safeguard consumer interests comprehensively and integratively, and can be enforced effectively in society. Governments and public consumer protection agencies can also use the law to empower consumers through consumer education and training.

DISCUSSION

Based on the research results above, The importance of evidence is central to the judicial procedure. In criminal cases, the fate of the accused will be decided at this stage; if insufficient evidence exists, the defendant will be declared innocent and must be released, and vice versa. In contrast to civil cases, this proof phase allows the parties to demonstrate the truth against the legal facts at the heart of the dispute. Therefore, the judge will examine and decide the case based on the

evidence presented by the disputing parties.

Proofing is a method a party performs to convince a judge of the veracity of proof or proof presented in a dispute. It seeks to provide certainty about the legal facts at issue in the dispute, which will then serve as the basis for a decision. According to the HIR System, in the law of civil cases, the judge is bound to the legal means of proof, meaning that a judge can only determine a case based on the legal means of proof that have been previously prescribed by law. Legally mandated forms of evidence.

The regulations are written and approved by the caretaker. This is to facilitate substantiation in the event of an insurance contract dispute. However, for electronic police (polis) carried out without face-to-face contact between the parties, evidence of such transactions is preserved in the form of electronic data recorded in a system. In this instance, there is an electrical issue. In the event of a dispute between the parties, an e-police proof will be admissible as evidence.

The legal understanding of an e-polis, so that it has the same status and proof capacity as the written law, is an essential aspect of insurance contracts utilizing e-police. Article 1865 to Article 1945 KUHPerdata, Article 137 to Article 158 and Article 162 to Article 177 HIR (for Java and Madura) and Article 163 to Article 185 and Article 282 to Article 314 Rbg(untuk luar Jawa dan Madura) govern the civil law proof-of-law system in Indonesia. The instruments of evidence under the Indonesian civil proof law are letter or written proof tools, witness evidence tools, persuasion proof devices, recognition proof equipment, and oath evidence tools. In the law of civil events, written proof instruments occupy the preeminent position among all other evidence types. In practice, a contract must be drafted and confirmed in writing. This is to facilitate substantiation in the event of an agreement dispute. According to Article 1868 of the KUH Perdata, written evidence is not an authentic act because it was not created by or in the presence of a public official. Insurance policy is a form of underhanded activity because it is not conducted in front of public authorities. Insurance is a human endeavour. The parties only add material to the agreement because the police are essentially used as evidence the day following a dispute. Thus, the situation with e-police is essentially identical to that of the police in general, with the exception that e-polis utilizes the Internet. The system generates a variety of electronic document formats. In contrast to the conventional police, the e-police has no physical evidence.

Due to the fact that it is not conducted in front of public authorities, insurance policy is a form of underhanded behaviour. People create insurance policies. The parties are only adding material to the agreement because the police are used as evidence the day after a dispute has occurred. Consequently, the situation with e-police is essentially identical to that of the police in general, with the exception that e-police utilizes electronic communication. The system generates various types of electronic documents. In contrast to the conventional police, there is no physical evidence in the e-police.

That the police functions as written evidence of the existence of an insurance contract between the insured and the insurer. As documented evidence, The listed in the policy must be explicit and should not contain words or phrases that are open to multiple interpretations, making it difficult for both the insured and the insurer to realize their rights and responsibilities in the performance of the insurance. In addition, the policy includes agreements on special terms and

promises that serve as the foundation for fulfilling rights and obligations for insurance (Kadir Muhammad, 2006).

In insurance contracts utilizing e-policy, parties conduct insurance agreements via face-to-face electronic media. An email containing an e-policy software file serves as evidence of the transaction. A judge may not refuse to examine an issue because it is illegal. (*ius curia novit*). Thus, the judge is able to conduct an authentic interpretation, allowing an e-policy to be accepted as evidence in civil matters. Nonetheless, The law of civil proceedings is constrained by admissible evidence and cannot offer interpretations. It pertains to the nature of the truth sought in a civil case, i.e., the formal truth, and the provision that the means of evidence in civil matters are restrictive, making it impossible for a judge to interpret beyond what the law has prescribed. According to this provision, e-policy can therefore be classified as non-proof. Even though it is documented, it is still difficult to accept as evidence in court. Therefore, other forms of evidence, such as witness testimony, must be used in a dispute. Indonesia has made endeavours pertaining to electronic transaction Proof. 5 to 9 of the Information and Electronic Transactions Law No. 11 of 2008.

According to the preceding discussion, proof aims to produce a verdict or an establishment. Consequently, the purpose of proofing is a judge's decision based on the evidence. As the ultimate purpose of evidence, it must be consistent with the law's general purpose. So the power of evidence on e-policy will have strong legal force if the e-policy is made in the form of a written act and acknowledged by both parties. Still, if the epic is only in the form of soft files sent via email, then e-Police does not have the power of evidence because it does not comply with the provisions of Indonesia's positive laws.

CONCLUSION

In accordance with Article 1320 of the Covenant, E-policy as a form of agreement has generally met the requirements for validity. In the United Kingdom, however, e-policy agreements are also regulated. According to Article 255, the declaration of liability must be made in writing with a police-signed act. To understand that the e-policy does not satisfy the legal requirements of the fourth agreement is a halal reason.

Because e-policy violates the principle of equal commerce under the law. by Contract, the insurance could be interpreted as not meeting the objective conditions of a contract, which could render the contract void under the law. It should be noted, however, that Article 257, paragraph 1 of the Treaty states that the liability agreement exists as soon as it is concluded, with the mutual rights and obligations of the respondent and the guarantor commencing even before the policy is signed.

The power of proof on e-policy will have strong legal force when the e-polis is made in the form of a written act and recognized by both parties entering into an agreement; however, if e-Police is only a soft file sent via e-mail, then the e-policy lacks proof power because it does not comply with Indonesian legal provisions.

A comprehensive rule is required as an impending obstacle., as a suggestion, the Government may contemplate the 1996 UNCITRAL Model Law on Electronic Commerce as one of its future reference materials when drafting regulations.

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