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## Unveiling the Legal Landscape: A Comprehensive Study on Motor Vehicle Insurance in Accordance with the Commercial Law Code

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### Abstract

The regulation of commercial insurance in Indonesia is governed by the Indonesian Civil Code, in which insurance is considered a contract subject to the same general principles as other contractual agreements. Furthermore, the Insurance Law No. 2 of 1992 defines insurance as a business that regulates the conduct of those who operate insurance businesses. This research employs a qualitative approach using descriptive techniques to analyze motor vehicle insurance law according to the Indonesian Commercial Code. The findings suggest that insurance companies are institutions that collect funds from society and operate based on principles of responsible and healthy business practices, in accordance with government regulations. Responsibility is ensured through the issuance of insurance policies that outline the agreed-upon terms between the insurer and insured party, with the payment of premiums signifying the transfer of risk and the establishment of rights and obligations between the parties.

### Keywords

Coverage, Insurance, Commercial Law Code, Motor Vehicle Insurance

## 1. Introduction

Motorized vehicles are one of the most popular modes of transportation in Indonesia. According to the Indonesian National Police (Polri), as of 31 December 2022 the number of

motorized vehicles in Indonesia reached 152.51 million units. A total of 126.99 million units or 83.27% of them were motorcycles, while the rest were passenger cars. Of course, the development of motorized vehicles is very rapid along with the growth of the automotive industry in Indonesia. The growth of motorized vehicles is much higher than that of commercial motorized vehicles or other public transportation. Motorized vehicles are a form of transportation that is needed by the people of Indonesia for their daily activities. However, as the number of motorized vehicles increases, traffic conditions become increasingly congested. At the same time, other risks such as accidents and losses due to various reasons can occur in motorized vehicles. This is a reality that will always exist in society; therefore, we must manage it as best we can through certain techniques to overcome risks known as Risk Management (Vaughan & Vaughan, 2007; Mars & Weir, 2020).

Insurance business plays an important role in the national economy, but various challenges still hinder the national insurance industry from taking on such a role, including the rights and obligations of policyholders in an insurance agreement (Junaedy, 2011; Savitri, 2019). Additionally, unless hindered by legal issues in the judiciary, the legal understanding of insurance practitioners towards insurance law in Indonesia is still limited to the law on insurance as a business, even though insurance cannot be separated from its position as an agreement regulated under the Civil Code and Commercial Code (Skipper & Klein, 2000). The regulation of insurance as an institution that collects public funds, and must conduct its business according to the principles of sound and responsible management, as regulated in the Civil Code and Commercial Code, is vital to governing the behavior of insurance businesses (Clarke et al., 2017).

The increase in the number of motorized vehicles has been identified as the primary cause of the rising number of traffic accidents, particularly in urban areas, with road accidents being labeled as the primary "killer machine" by police data. Consequently, driving without insurance coverage is considered highly precarious (Hodges, 2015; (Nocco & Stulz, 2006; Clifford & Smith, 1995; Diebold et al., 2000).

The use of motor vehicle insurance is essential in alleviating the burden caused by accidents or damages to vehicles. The amount of compensation provided by insurance companies for those affected by accidents is significant and helpful in repairing damaged vehicles, making them roadworthy again (Marson & Ferris, 2017) As a result of advances in transportation technology, including land, sea, and air transport, motor vehicle insurance has rapidly developed in Indonesia. The use of high-tech transportation equipment is widespread among certain segments of society due to competition in pricing and quality of private and public transportation. This increase has had significant economic impacts that must be taken into account.

## **2. Research Methods**

This research employs a qualitative research method with a juridical-empirical approach. In order to understand and interpret the social reality of something and offer insight into various facets of social life, qualitative legal research aims to study something in its natural environment. The emphasis is on individual thoughts, emotions, and experiences (Bhat, 2020). Regarding the nature of the data, the theoretical basis, and the types of tools used for data collection, it is different from quantitative research (Bhat, 2020). Synergy is generated by combining the two approaches. Defining the social environment, interpreting social data, examining presuppositions,

and assessing policies are distinct features of qualitative legal research. The procedure involves formulating specific research questions, selecting tools for data collection, sampling, data collection, analysis, and interpretation (Bhat, 2020). The study directly observes the legal phenomenon that occurs in society and provides a general description of the Law of Motor Vehicle Insurance according to the Commercial Law Code (Moleong, 2017).

### **3. Results And Discussion**

#### **3.1 Insurance as a Contract in Accordance with the Indonesian Penal Code (KUHP)**

Insurance law is a subject of civil law, unless specified as a special provision in the Commercial Code as an agreement (Harsono, 2009). Regulations regarding obligations are found in Book Three, which applies to group insurance agreements. The conditions for the validity of an agreement include agreement, specific terms, consideration, and lawful cause, as stipulated in Article 1320 of the Civil Code. According to Article 1313 of the Civil Code, "an agreement is an action taken on behalf of one or more people who commit themselves to one or more others." An insurance agreement refers to an agreement where one party agrees to provide compensation to another for a specific matter in exchange for a predetermined premium. Insurance law includes provisions related to the rights and obligations of the parties involved in the transfer and acceptance of risk.

Insurance law is primarily governed by civil law, unless there are specific provisions outlined in the Commercial Code that apply to insurance agreements (Harsono, 2009). The regulations concerning obligations in insurance agreements can be found in Book Three, which specifically pertains to group insurance agreements. For an insurance agreement to be considered valid, certain conditions must be met, including mutual agreement, specific terms and conditions, consideration, and a lawful cause, as stated in Article 1320 of the Civil Code (Wijaya et al., 2021).

According to Article 1313 of the Civil Code, an agreement is defined as an action taken by one or more parties who commit themselves to one or more others. In the context of insurance, an insurance agreement refers to a contractual arrangement wherein one party agrees to provide compensation to another party for a specific subject matter in exchange for a predetermined premium. Insurance law encompasses provisions that govern the rights and obligations of the parties involved in the transfer and acceptance of risk (Munawir, 2020). These provisions aim to ensure fairness, clarity, and accountability in insurance agreements, thereby protecting the interests of all parties involved. By providing a legal framework for insurance transactions, insurance law promotes trust and stability in the insurance industry, facilitating the smooth functioning of the insurance market (Chuasanga, 2023).

An insurance agreement, often referred to as a contract, represents a mutual understanding between two parties. In this agreement, one party agrees to provide compensation to the other party in exchange for a specified premium. This compensation is provided in response to a specific subject or property that is at risk. Insurance law encompasses provisions that govern the rights and obligations of both parties involved in the agreement. It focuses on the transfer and acceptance of risks, ensuring that the insured party is protected and compensated in the event of a covered loss or damage (Vaughan & Vaughan, 2007). By defining the terms and conditions of the insurance agreement, insurance law establishes a legal framework that safeguards the interests

of both parties and ensures a fair and equitable resolution in case of an insurable event. The provisions within insurance law play a crucial role in clarifying the rights, responsibilities, and expectations of the parties involved, thereby maintaining the integrity and effectiveness of the insurance contract.

Insurance law is essentially the object of private law, thus it can be concluded that unless otherwise specified in the Commercial Code as a specific provision as an agreement, insurance agreements are governed under the Civil Code. In substance, the regulation of obligations in Book Three in relation to insurance agreements can be grouped as follows: Validity Conditions of an Agreement. Article 1320 of the Civil Code states that there are four valid conditions for an agreement, namely: mutual agreement, capacity, a specific subject matter, and a lawful reason (Junaedy, 2015).

### **3.2 Insurance as an Agreement According to the Commercial Code**

According to Article 1 of KUHD, commercial law can be a continuation of civil law. Therefore, the provisions contained in KUHP data as general provisions can apply to KUHD as special provisions as long as the latter provisions have not been regulated or vice versa (Parera & Tumanggor, 2021). It is important to remember that insurance agreements are agreements based on "uberrimae fidei, utmost good faith." In the Common Law system, there is a wide obligation for parties to disclose information (Batubara & Syahriza, 2022). An insurance agreement can be interpreted as an agreement where one party (the insurer) agrees to bear the risk of an unforeseeable event in exchange for a certain reward, while the other party (the insured) is threatened and has an interest in the event, and agrees that in the event of the occurrence, the insurer will pay the insured in the form of a certain amount of money or provide other benefits that have financial value (which is not always paid in the form of cash) (Clarke, 2002).

Article 247 of KUHD states that insurance can include fire hazards, threats to agricultural products that have not been harvested, a person's life, and especially hazards from sea and slavery and hazards that threaten transportation on land, rivers, and inland waters. From the types of insurance mentioned in KUHD, there can be a broad classification, namely: a) loss insurance or general insurance consisting of fire insurance and agricultural insurance, b) life insurance, c) marine, land and river transportation insurance. Article 247 of the Civil Code (KUHD) provides a comprehensive list of the types of insurance that can be covered under insurance agreements. These include insurance against fire hazards, risks to agricultural products that have not been harvested, risks to a person's life, as well as risks associated with sea voyages, slavery, and transportation on land, rivers, and inland waters. Based on the types of insurance mentioned in the Civil Code, insurance can be broadly classified into several categories. Firstly, there is loss insurance or general insurance, which encompasses fire insurance and agricultural insurance, providing coverage for losses resulting from fire incidents or risks related to agricultural activities. Secondly, there is life insurance, which is designed to provide financial protection or benefits to the insured or their beneficiaries in the event of death or other specified circumstances. Lastly, there is marine, land, and river transportation insurance, which is specifically tailored to cover risks and damages associated with the transportation of goods or people via waterways, land routes, or river systems. These classifications help insurance companies and individuals better understand and navigate the diverse range of insurance options available, ensuring that they

obtain the appropriate coverage to mitigate potential risks and losses in various aspects of life and business.

The analysis of insurance in KUHD shows that the scope of regulation in KUHD emphasizes only fire insurance, while there are various other types of insurance that require regulation. For example, motor vehicle insurance, health insurance, and aviation insurance that are now common are not recognized by KUHD (Adam & Hikmah, 2020). Despite the limitations in the classification above, KUHD allows for a wide range of insurance coverage, in accordance with Article 268 of KUHD, which states: "An insurance policy may relate to any interest that can be assessed in monetary terms, is threatened by any hazard, and is not excluded by law." Therefore, KUHD provides a basis for the insurance industry's development and expansion in Indonesia. In addition, the regulation of insurance in KUHD should be updated to include new types of insurance that have emerged in the market. This is important to ensure that the insurance industry in Indonesia can compete with other countries. Moreover, advancements in technology, such as digital insurance and other technologies, should also be considered in the update of KUHD.

### **3.3 Implementation of Motor Vehicle Insurance Agreement According to KUHD**

#### **3.3.1 Settings**

In contrast to fire insurance, which receives specific regulation in the Indonesian Civil Code (KUHD), motor vehicle insurance is a type of loss insurance that does not receive specific regulation in the KUHD. As a result, all general provisions for loss insurance in the KUHD apply to motor vehicle insurance between the insured party and insurer. The policy is signed by the insurer and serves as written proof for both parties to fulfill obligations and obtain reciprocal rights. To further discuss motor vehicle insurance, the standard policy for motor vehicle insurance can be used as the main reference, in addition to the general provisions in the KUHD

#### **3.3.2 Insurance Policy**

Besides meeting the general requirements in Article 256 of the Indonesian Civil Code, a motor vehicle insurance policy must also include specific requirements that are applicable only to motor vehicle insurance (Nasution, A. (2017). To understand the general requirements in Article 256 that also apply to motor vehicle insurance, the following are presented as the general requirements.

Motor vehicle insurance entails various important details that should be clearly addressed. Firstly, it is crucial to specify the exact day, date, and location where the motor vehicle insurance policy is held. Secondly, the name of the insured party, whether they have obtained the insurance for their own vehicle or for the benefit of a third party, must be clearly stated. Thirdly, the insurance policy should provide sufficiently clear information regarding the coverage offered for the insured motor vehicle against potential perils and risks. Additionally, the specific amount insured against the covered harm or risk should be clearly indicated. Moreover, the events that would result in losses borne by the insurer should be clearly outlined to ensure clarity for both parties. The motor vehicle insurance policy should also state the start and end dates, specifying the duration of the insurer's responsibility. Furthermore, it is essential to disclose the motor vehicle insurance premium amount paid by the insured party. Lastly, any special promises or

agreements made between the insured and the insurer should be documented to ensure mutual understanding and compliance (Huda, (2017).

A comprehensive motor vehicle insurance policy includes specific provisions and special conditions that govern various aspects of the coverage. Alongside the provisions concerning the risks covered and excluded, the policy contains additional special conditions that are crucial for both the insurer and the insured. Firstly, it specifies the territory within which the motor vehicle insurance policy is valid, typically limited to the jurisdiction of the state. Secondly, it outlines the requirements and procedures for premium payment, ensuring that the insured party fulfills their financial obligations. In a comprehensive motor vehicle insurance policy, there are several important provisions and special conditions that are essential to both the insurer and the insured. In addition to the specific coverage details and the risks that are included or excluded, these special conditions play a vital role in governing various aspects of the policy. Firstly, the policy specifies the territory within which the motor vehicle insurance is valid, typically limited to the jurisdiction of the state (Wijaya et al., 2023).

This ensures that the coverage remains applicable within the designated geographical area. Secondly, the policy outlines the requirements and procedures for premium payment, including the frequency and method of payment. This ensures that the insured party fulfills their financial obligations and maintains the policy in force. Furthermore, by specifying the designated geographical area, the motor vehicle insurance policy ensures that the coverage remains valid and applicable only within that defined region. This provision helps both the insurer and the insured understand the limits and boundaries of the policy's coverage. It also serves to prevent any potential misunderstandings or disputes regarding the scope of the insurance protection (Richardson, 2001) In addition, the policy includes detailed information regarding the premium payment requirements and procedures. This section outlines the obligations of the insured party in terms of timely and regular premium payments. It specifies the frequency of payment, such as monthly, quarterly, or annually, as well as the acceptable methods of payment, such as bank transfers or online platforms. By clearly defining these requirements, the policy ensures that the insured party understands their financial responsibilities and has a clear roadmap for meeting their premium obligations.

Additionally, the policy highlights the importance of promptly notifying the insurer about accidents, taking preventive measures, and informing the insurer of any demands made by third parties or criminal charges filed against the insured. Furthermore, the policy addresses matters related to loss, indemnity, duplicate insurance, incorrect reporting, subrogation in accordance with Article 284 of the Criminal Code, and the potential loss of indemnity rights. It also includes provisions for resolving disputes through arbitration, offering a mechanism for resolving disagreements between the parties involved. Lastly, the policy defines the expiration date of the motor vehicle insurance, indicating the duration for which the coverage remains in effect. These special conditions play a vital role in governing the rights and responsibilities of both the insurer and the insured throughout the course of the motor vehicle insurance agreement.

### ***3.3.3 Losses and compensation***

In the event of damage or loss of a motor vehicle covered under motor vehicle insurance due to a hazard, the insurer is required to replace the vehicle if the value of the vehicle exceeds the

value of the insurance. This is known as a partial loss or under insurance. The insurer is obligated to complete compensation payments within 30 days from the written agreement between the insurer and the insured. The claim procedure for the vehicle must be followed by reporting the incident verbally and in writing to the nearest office within 5 days. Then, the insured must fill out a claim form and submit other supporting documents. After conducting a survey and analysis of the claim, the officer will decide whether to reject, repair, or replace the claim. It is the insured's responsibility to inform the insurer of any losses or damages. The insurer's liability must be in accordance with the mechanism agreed upon by both parties. Article 11 of the Indonesian Motor Vehicle Insurance Standard Policy outlines the liability of the insured in the event of loss or damage, and the insurer must fulfill its obligation to bear the loss as agreed upon in the insurance policy. Compensation must be provided by the insurer based on the value of the vehicle prior to the damage or loss. If a dispute arises and cannot be resolved within 30 days, the matter will be referred to the Indonesian Loss Insurance Council.

#### **4. Conclusion**

Insurance companies operate by collecting funds from the public and adhering to healthy and responsible business principles that are subject to government regulations. The regulation of commercial insurance in Indonesia is governed by the Civil Code, which outlines insurance as an agreement subject to general agreement principles, as well as the Insurance Law No. 2 of 1992, which governs insurance as a business that regulates the behavior of those who run insurance companies. While motor vehicle insurance is not specifically regulated in the Civil Code, its implementation in policies serve as the basis for the insurance relationship between the insured and the insurer, and is still subject to the provisions set forth in the Civil Code. The most important aspects that should be included in the policy are related to the terms and conditions in the event of risk, premium payments, compensation payments, and policy cancellations. Insurance companies play a crucial role in today's economy, as they provide important financial protection to individuals and businesses alike. As such, it is important that the industry maintains sound business practices, and adheres to strict regulations to ensure the protection of both customers and the industry as a whole.

#### **References**

- Adam, F. F., & Hikmah, Y. (2020, April). Analysis of website utilization for online motor vehicle insurance purchases. In *3rd International Conference on Vocational Higher Education (ICVHE 2018)* (pp. 33-38). Atlantis Press.
- Batubara, I. P., & Syahriza, R. (2022). Analisis Klaim Asuransi Kendaraan Bermotor pada Pt Asuransi Jasindo Kantor Cabang Medan. *Journal of Social Research*, 1(9), 1026-1031.
- Bhat, P. I. (2020). *Idea and Methods of Legal Research*. Delhi: Oxford Academic.
- Chuasanga, A. (2023). The Contract or Agreement Business Law in Indonesia. *Sultan Agung Notary Law Review*, 5(1), 1-7.
- Clarke, M. A. (2002). *The Law of Insurance Contract*, LLP, 4th Edition, 2002.
- Clarke, M. A., Hooley, R. J., Munday, R. J., Sealy, L. S., Turner, P. G., & Tettenborn, A. M. (2017). *Commercial law: Text, cases, and materials*. Oxford University Press.

- Clifford, W., & Smith, J. (1995). Corporate risk management: theory and practice. *The Journal of Derivatives*, 30, 21-31.
- Diebold, F. X., Schuermann, T., & Stroughair, J. D. (2000). Pitfalls and opportunities in the use of extreme value theory in risk management. *The Journal of Risk Finance*, 1(2), 30-35.
- Harsono, Sonni Dwi. (2009). PK.001 Prinsip-prinsip dan Praktik Asuransi. Jakarta: Jakarta Insurance Institute
- Hodges, C. (2015). *Law and corporate behaviour: Integrating theories of regulation, enforcement, compliance and ethics*. Bloomsbury Publishing.
- Huda, M. K. (2017). Good Faith in Life Insurance Contract by Indonesian Court. *Hasanuddin Law Review*, 3(1), 49-58.
- Junaedy, G. (2011). *Hukum Asuransi Indonesia*. Jakarta: Sinar Grafika.
- Mars, G., & Weir, D. T. (2020). *Risk Management: Volume I: Theories, Cases, Policies and Politics*. Routledge.
- Marson, J., & Ferris, K. (2017). Motor vehicle insurance law: ignoring the lessons from King Rex. *Business Law Review*, 38(5).
- Moleong, L. J. (2017). *Metode Penelitian Kualitatif*. Bandung: Remaja Rosdakarya.
- Munawir, Z. (2020). Legal Contract of Stall Lots to Support Business and Merchants Security. *International Journal of Future Generation Communication and Networking*, 13(2), 1683-1688.
- Nasution, A. (2017). The government decentralization program in Indonesia. *Central and Local Government Relations in Asia: Achieving Fiscal Sustainability*, 601, 276-305.
- Nocco, B. W., & Stulz, R. M. (2006). Enterprise risk management: Theory and practice. *Journal of Applied Corporate Finance*, 18(4), 8-20.
- Parera, A. B., & Tumanggor, M. S. (2021). Application of Business Principles Insurance in Indonesia. *Journal of Law, Politics and Humanities*, 2(1), 1-12.
- Richardson, B. J. (2001). Mandating environmental liability insurance. *Duke Envtl. L. & Pol'y F.*, 12, 293.
- Savitri, N. A. (2019). Perlindungan Tertanggung Pada Asuransi Jiwa Berdasarkan Undang-Undang No. 40 Tahun 2014 Tentang Perasuransian. *Jurnal Hukum Magnum Opus*, 2(2), 162-173.
- Skipper, H. D., & Klein, R. W. (2000). Insurance regulation in the public interest: The path towards solvent, competitive markets. *The Geneva Papers on Risk and Insurance-Issues and Practice*, 25, 482-504.
- Vaughan, E. J., & Vaughan, T. (2007). *Fundamentals of risk and insurance*. John Wiley & Sons.
- Wijaya, F., Pakpahan, K., & Toknado, V. (2021, October). The Balance of Contract in Online Insurance Agreements in The Era of Revolution 4.0 (Insurance Products of Several Banks in Indonesia). In *ICLHR 2021: Proceedings from the 1st International Conference on Law and Human Rights, ICLHR 2021, 14-15 April 2021, Jakarta, Indonesia* (p. 65). European Alliance for Innovation.
- Wijaya, G. F., Lie, G., & Putra, M. R. S. (2023). Analysis of Motor Vehicle Insurance Coverage Under Indonesian Insurance Law. *QISTINA: Jurnal Multidisiplin Indonesia*, 2(1), 617-621.