



## Inclusion of a Termination of Coverage Clause in an Insurance Policy Issued by PT Asuransi Artarindo

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Article	Abstract
<b>Keywords:</b> Policy; Insurance; Exoneration Clause; Termination Clause	<p><i>The inclusion of a coverage termination clause in an insurance policy is something that must be included in the policy as stipulated in Article 11 letter k of OJK Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, but this clause is prohibited from being included as stipulated in Article 30 paragraphs (4) and (5) of OJK Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector. This research aims to analyze the inclusion of the termination of coverage clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo and then associated with the elements of the exculpatory clause contained in Article 30 paragraphs (4) and (5) letter a of OJK Regulation Number 6/POJK.07/2022 and analyze the legal consequences of the inclusion of the termination of coverage clause in the insurance policy. This research includes legal research with a statutory and conceptual approach. Legal materials are obtained by means of literature study and analyzed prescriptively. The results show that the inclusion of the coverage termination clause in the Insurance Policy of PT Asuransi Artarindo is in accordance with the provisions in Article 11 letter k of the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products and Articles 249, 276, 293 of the Commercial Code. The legal effect of the inclusion of the coverage termination clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo is that there are no things that can cancel this policy because the subjective requirements of the agreement in the form of agreement requirements and capacity requirements have been fulfilled. This policy will also not be null and void because the objective conditions of the agreement in the form of a condition of a certain thing and a condition of a lawful cause have been fulfilled.</i></p>

### INTRODUCTION

Risk is an inseparable part of everyday life. Every activity carried out has the potential to cause risk, such as risk of loss, health risk, financial risk, and so on. There are several ways to overcome the risks that may occur, namely by avoiding or staying away from the possibility of risk, taking precautions with the aim that the consequences

of unwanted risks can be overcome, transferring or sharing with parties who are willing to bear the risk, or accepting (Soesi Idayanti, 2020). If you choose to overcome the risk by transferring the risk to a party willing to bear the risk, the most ideal option is to transfer it to an insurance company.

One of the insurance companies in Indonesia is PT Asuransi Artarindo, which is a private general insurance company that has been registered with the Financial Services Authority. There are several product categories offered by this insurance company, including health insurance, movable property insurance, property insurance, motor vehicle insurance, travel insurance, transportation insurance, extended warranty insurance, and liability insurance (Asuransi Artarindo, 2023).

The ongoing relationship between the insured and the insurance company as the insurer is *legally bound* due to an agreement. The attachment is in the form of voluntary willingness on the part of the insured and the insurer in carrying out their rights and obligations (Purgito, 2022). In insurance activities, the rights and obligations of the insured and the insurer are stated in the policy.

The policy is a document containing an agreement from the insured party that transfers the risk to the insurer by paying a sum of money, which then this document is used as the basis for fulfilling the achievements of the parties (Ayu Citra Santyaningtyas, 2020). The policy has usually been prepared by the insurance company and the party who wants to transfer the risk only has the option to agree or reject the provisions in the policy, in other words, the form of this policy is classified as a standard agreement.

Standard agreements are basically allowed because they do not conflict with Article 1320 of the Civil Code and are also in line with the principle of freedom of contract (Permitasari, 2020). However, the principle of freedom of contract cannot be interpreted as giving complete freedom, because it is feared that there is an imbalance in the position between the parties in an agreement (Anggitariani Rayi, 2022). The principle of freedom of contract has the potential to cause an unbalanced position between consumers, namely insurance insureds and financial services business actors (hereinafter referred to as PUJK), namely insurance companies.

Currently, the use of standard agreements is commonly practiced in the business world, including those with exoneration clauses (Permitasari, 2020). An exoneration clause is a clause that limits liability. Exoneration clauses are often used by business actors to exempt and even eliminate responsibility (Listiawati, 2015).

The Insurance Policy issued by PT Asuransi Artarindo contains a clause that exempts the insurance company as the insurer from a loss suffered by the insured, as contained in Article 7 of the Insurance Policy of PT Asuransi Artarindo which reads:

1. "If any of the following changes occur after the entry into force of this agreement, the Applicant or the Insured must notify the Insurer in writing without delay of the change and request the Insurer's approval of the matter

through the issuance of an adequate Endorsement to this Policy. However, this provision shall not apply after such change has ceased to exist:

1. In the event that the Property insured has been transferred to another party.
2. In the event that the Insured Property is used or stored in a manner or at a location other than that specified in the Policy.
3. In the event that the location where the Insured Property is usually stored as stated in the Policy changes or undergoes a change in shape, repair or similar work.
4. In the event that other circumstances arise which form part of a material change in the contents of the Policy or the Letter of Application, or in the event that the danger to the Insured Property materially increases.

2. The Insurer shall not be liable for any loss or damage occurring between the time when the change mentioned in the preceding paragraph takes place (or in the event that the Applicant or the Insured is not aware of the change, the time when the change becomes known) and the time of receipt by the Insurer of the notice as required in the preceding paragraph."

The Insurance Policy of PT Asuransi Artarindo is contrary to Article 18 paragraph (1) letter a of Law Number 8 Year 1999 concerning Consumer Protection which reads: "Business actors in offering goods and/or services intended for trade are prohibited from making or including standard clauses in every document and/or agreement if:

- a. states the transfer of responsibility of the business actor;" and contrary to Article 30 paragraphs (4) and (5) letter a of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector which reads:

4. "PUJK is prohibited from including clauses in standard agreements that contain exoneration/exclusion clauses.
5. The exoneration/exclusion clause as referred to in paragraph (4) contains: a. states the transfer of PUJK's responsibility or liability to the Consumer."

The provisions in Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection and Article 30 paragraphs (4) and (5) letter a of Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector are not in line with the provisions in Articles 249, 276, and 293 of the Commercial Code and Article 11 letter k of Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, which actually gives the Insurer the opportunity not to be responsible for the losses suffered by the Insured.

In the description above, it appears that there is a conflict of norms between laws and regulations related to consumer protection and laws and regulations related to insurance that regulate the inclusion of clauses transferring the responsibility of business actors.

Based on the description of the research background as described above, the problems formulated in this research are:

1. Does the termination of coverage clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo fulfill the elements of the exculpatory clause contained in Article 30 paragraphs (4) and (5) letter a of OJK Regulation Number 6/POJK.07/2022?
2. What are the legal consequences of the inclusion of the coverage termination clause contained in Article 7 of the Insurance Policy issued by PT Asuransi Artarindo?

## METHODS

This research is a legal research. The focus of this research is to analyze the conflict of norms between Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, Article 30 paragraph (4) and (5) letter a of Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector with Articles 249, 276, and 293 of the Commercial Code and Article 11 letter k of Financial Services Authority

Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. There are 2 (two) research approaches used,

namely *statutory approach* and *conceptual approach*. The statutory approach uses Law Number 8 of 1999 concerning Consumer Protection, the Commercial Code, Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector, and Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. The conceptual approach used is the concept of exoneration clause.

There are 2 (two) sources of legal materials used in this research, namely primary legal materials and secondary legal materials. Primary legal materials used are the Civil Code, the Commercial Code, Law Number 8 of 1999 concerning Consumer Protection, Law Number 40 of 2014 concerning Insurance, Law Number 4 of 2023 concerning Development and Strengthening of the Financial Sector, Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products, Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector and PT Asuransi Artarindo Insurance Policy. Secondary legal materials used are law books, websites, and legal journals that have correlation with the inclusion

of the coverage termination clause in Article 7 of the insurance policy issued by PT Asuransi Artarindo.

The technique of collecting legal materials uses literature studies (literature) by combining all legal materials from the level of laws to OJK regulations. Then analyzed prescriptively by describing as clearly as possible the existing legal problems, then analyzed in depth to be able to draw a conclusion related to right or wrong.

## RESULTS AND DISCUSSION

### 1. Fulfillment of the elements of the exculpatory clause contained in Article 30 paragraphs (4) and (5) letter a of OJK Regulation Number 6/POJK.07/2022 for the inclusion of the termination of coverage clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo.

The concept of agreement is contained in Article 1313 of the Civil Code which reads: "An agreement is an act by which one or more people bind themselves to one or more other people."

From the sound of Article 1313 of the Civil Code above, it can be interpreted that an agreement can only be made by more than one person. If it is related to insurance activities, then an agreement can be made if there are parties who want to bear the risk and there are parties who intend to transfer the risk.

Everyone has the right to make an agreement and determine its form, as in treaty law known as the principle of freedom of contract. In the context of insurance activities, this principle of freedom of contract frees the parties involved, namely the insurer and the insured to determine the contents of the policy or insurance agreement. This principle of freedom of contract must be interpreted as freedom that is not completely free, but must be fully responsible and must not harm other parties.

The policy is a written document that is used as evidence that insurance has occurred. The provisions regarding the form of the policy that is required to be written are found in Article 255 of the Commercial Code which reads:

"Insurance must be carried out in writing by deed, which is named the policy."

The entire provisions in the insurance policy have been prepared by the insurance company and the party who wants to transfer the risk only has the option to agree or reject the provisions in the policy, in other words, the form of this policy is classified as a standard agreement.

In a standard agreement, the principle of balance is not reflected, which is motivated by the unbalanced bargaining position between the parties. State intervention is very necessary for the existence of this standard agreement, considering the existence of this standard agreement has controlled almost all contracts or agreements in the business world, which is based on an assertion that by using standard agreements, the implementation of business activities runs more

effectively and efficiently. The state intervention in question can be in the form of making laws and regulations and the process of resolving cases in court regarding standard agreements.

The rules regarding standard agreements are found in Article 18 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection which reads:

1. "Business actors in offering goods and/or services intended for trading are prohibited from making or including standard clauses in every document and/or agreement if:
  - a. states the transfer of responsibility of the business actor;
  - b. states that business actors have the right to refuse the delivery of goods purchased by consumers;
  - c. states that business actors have the right to refuse the return of money paid for goods and / or services purchased by consumers;
  - d. states the granting of power from consumers to business actors, either directly or indirectly, to take all unilateral actions related to goods purchased by consumers in installments;
  - e. regulate the proof of the loss of usefulness of goods or utilization of services purchased by consumers;
  - f. give the right to business actors to reduce the benefits of services or reduce the consumer's property which is the object of buying and selling services;
  - g. states that consumers are subject to regulations in the form of new rules, additions, continuation and / or further changes made unilaterally by business actors during the period when consumers utilize the services they buy;
  - h. state that the consumer authorizes the business actor to impose a mortgage, lien, or security right on the goods purchased by the consumer in installments. "

Article 18 paragraph (1) of Law Number 8 Year 1999 on Consumer Protection above contains several prohibitions for business actors to include standard clauses in agreements. In line with this article, Article 30 paragraphs (4) and (5) letter a of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector reads:

4. "PUJK is prohibited from including clauses in standard agreements that contain exoneration/exclusion clauses.
5. The exoneration/exclusion clause as referred to in paragraph (4) contains:
  - a. states the transfer of responsibility or liability of PUJK to the Consumer;
  - b. states the granting of power of attorney from the Consumer to PUJK, either directly or indirectly, to take all unilateral actions on goods pledged

by the Consumer, unless such unilateral actions are carried out based on the provisions of laws and regulations;

- c. regulates the obligation of proof by the Consumer, if PUJK states that the loss of usefulness of the product and/or service purchased by the Consumer is not the responsibility of PUJK;
- d. give PUJK the right to reduce the usefulness of the product and/or service or reduce the Consumer's assets which are the object of the product and/or service agreement;
- e. state that the Consumer authorizes PUJK to impose a mortgage, lien or security interest on the product and/or service purchased by the Consumer in installments;
- f. state that PUJK can add, change, and/or provide further rules unilaterally after the agreement is approved/agreed upon;
- g. state that the Consumer is subject to unilateral changes by PUJK to the rules as set out in letter f after the agreement has been signed by the Consumer;
- h. authorizes PUJK to avoid or limit the enforceability of a clause;
- i. states that PUJK has the authority to unilaterally interpret the meaning of the agreement;
- j. states that PUJK limits liability for the errors and/or omissions of employees and/or third parties working for or representing PUJK's interests;
- k. limit the Consumer's right to sue the PUJK in the event of a dispute relating to the agreement; and/or
- l. limits the evidence that can be provided by the Consumer in the event of a dispute relating to the agreement."

The prohibition for business actors to make standard agreements with standard clauses prohibited by laws and regulations related to consumer protection is also intended for business actors in the insurance sector, which in this case is the insurance company PT Asuransi Artarindo.

The Insurance Policy of PT Asuransi Artarindo needs to be tested first to ensure whether it is in accordance with the applicable provisions. Article 7 of the Insurance Policy of PT Asuransi Artarindo reads:

1. "If any of the following changes occur after the entry into force of this agreement, the Applicant or the Insured shall notify the Insurer in writing without delay of such changes and request the Insurer's approval thereof through the issuance of an adequate Endorsement to this Policy. However, this provision shall not apply after such change has ceased to exist:

1. In the event that the Property insured has been transferred to another party.
2. In the event that the Insured Property is used or stored in a manner or at a location other than that specified in the Policy.
3. In the event that the location where the Insured Property is usually stored as stated in the Policy changes or undergoes a change in shape, repair or similar work.
4. In the event that other circumstances arise which form part of a material change in the contents of the Policy or the Letter of Application, or in the event that the danger to the Insured Property materially increases.

2. The Insurer shall not be liable for any loss or damage occurring between the time when the change mentioned in the preceding paragraph takes place (or in the event that the Applicant or the Insured is not aware of the change, the time when the change becomes known) and the time of receipt by the Insurer of the notice as required in the preceding paragraph."

Article 7 of the Insurance Policy of PT Asuransi Artarindo regulates the obligation of the Insured to immediately notify the Insurance Company as the Insurer in writing of any changes that occur, which later if the Insurance Company approves, an endorsement will be issued. However, there are several conditions that make the provisions in Article 7 number 1 no longer applicable, namely if:

1. The insured object is transferred to another person;
2. The insured object is used or stored in a place different from the provisions in the policy;
3. The insured object undergoes significant changes;
4. There is a material change or the insured object experiences an increase in the threat of danger.

The Insurance Company as the insurer will not be responsible for the above conditions, even though the insured party is not aware of this.

Article 7 of the Insurance Policy of PT Asuransi Artarindo will be analyzed using Article 30 paragraphs (4) and (5) letter a of OJK Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector which reads:

4. "PUJK is prohibited from including clauses in standard agreements that contain exoneration/exclusion clauses.
5. The exoneration/exclusion clause as referred to in paragraph (4) contains:
  - a. states the transfer of PUJK's responsibility or obligation to the Consumer"

Article 30 paragraphs (4) and (5) letter a of OJK Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector above the elements are as follows:

**a. Element "Financial Services Business Actors (PUJK)"**

Article 1 point 2 of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector states that: "Financial Services Business Actors, hereinafter abbreviated as PUJK, are Financial Services Institutions and / or parties that carry out business activities in raising funds, channeling funds, and/ or managing funds in the financial services sector."

Then in Article 3 point 6 of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector states that the Insurance Company is one of the PUJK which is subject to the POJK Consumer Protection.

From this definition, the Insurance Company, which in this study is PT Asuransi Artarindo, fulfills the first element in Article 30 paragraphs (4) and (5) of Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector.

**b. The element "prohibited from including an exoneration clause stating the transfer of responsibility or obligation of Financial Services Business Actors (PUJK) to consumers"**

The Explanation Section of Article 30 paragraph (4) of Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector states that:

"What is meant by "exoneration/exclusion clause" is a clause whose content increases the rights and/or reduces the obligations of PUJK, or reduces the rights and/or increases the obligations of consumers."

Then in the Explanation Section of Article 30 paragraph (5) of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector provides examples of examples of clauses transferring PUJK's responsibilities or obligations to consumers. The example used in the explanation of this article is in line with Article 7 of the PT Asuransi Artarindo Insurance Policy which contains a termination of coverage clause. In essence, Article 7 of PT Asuransi Artarindo's Insurance Policy releases the insurer or insurance company from its responsibility to compensate the insured party for losses incurred.

In insurance activities, the purpose of the insured party paying the premium is of course to get compensation for the losses received and it should be the obligation of the insurance company to bear the loss. The termination of insurance coverage

carried out by PT Asuransi Artarindo is not arbitrarily carried out without any particular reason. In Article 7 number 2 of the Insurance Policy of PT

Asuransi Artarindo, it is explained that the termination of this insurance coverage will be carried out if there are changes to the insured object. The changes in question are related to the four points contained in Article 7 number 1 of the Insurance Policy of PT Asuransi Artarindo, which include when the insurance object is transferred, used in a way or at a location other than that stated in the policy, the place of storage of the insurance object changes, and when there is an increase in the threat of danger to the insured object.<sup>0</sup>

From the sound of Article 7 numbers 1 and 2 of the Insurance Policy of PT Asuransi Artarindo, it can also be interpreted that the insurer will not terminate its coverage if there are no four changes as mentioned in the previous sentence. From the wording of Article 7 number 1 of the Insurance Policy of PT Asuransi Artarindo, it can also be interpreted that the insurer has a good intention to approve the issuance of the endorsement when the insured party notifies the insurer of changes to the insured object in writing. Based on this explanation, the author argues that the second element is not fulfilled.

There is a requirement to include a termination of coverage clause in the insurance policy as stipulated in Article 11 letter k of Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products. The termination of coverage clause is contained in Article 7 of the PT Asuransi Artarindo Insurance Policy which states that the Insurer, in this case the PT Asuransi Artarindo Insurance Company, will not be responsible for losses suffered by the Insured Party when there are the following 4 (four) things:

**a. "In the event that the insured property has been transferred to another party."**

This can be interpreted that the Insurer, in this case PT Asuransi Artarindo, is not responsible for losses incurred if the insured object is transferred to another person.

Article 250 of the Commercial Code reads: "If someone who is insured for himself, or someone whose burden is insured by a third party, at the time of coverage does not have an interest in the insured fine, the insurer is not obliged to compensate for the loss."

From the wording of Article 250 of the Commercial Code above, it can be interpreted that the insurer is not obliged to compensate for losses if when an event occurs that causes losses while the insured party has no interest. In an insurance policy, of course, there is the identity of the insured party. If the insurance object is transferred and then a loss occurs, the party receiving the transfer of the insurance

object should not be entitled to ask for compensation from the insurer because the policy contains the identity of the insured.

The author agrees with the provision to notify the insurer if the insurance object is transferred to another party, because basically the policy is held because there are interests that want to be insured. The transfer of the insurance object also needs to be reassessed by the insurance company to conclude how the condition of the insurance object and how the condition of the new insured party.

Article 265 of the Commercial Code reads: "In coverage for third parties, it must be expressly stated in the policy, whether it occurs based on the provision of a mandate, or outside the knowledge of those concerned."

From the above article of Article 265 of the Commercial Code, it can be interpreted that there is a requirement to expressly state in the insurance policy if the coverage is held for a third party. In this context, the party who receives the transfer of the insurance object can be referred to as a third party, so it is appropriate that the provisions in Article 7 of the Insurance Policy of PT Asuransi Artarindo require the insured party to report to the insurer regarding the transfer of the insurance object which will then be issued an endorsement by the insurer.

**b. "In the event that the insured Property is used or stored in a manner or at a location other than that stated in the Policy."**

This can be interpreted that the Insurer, in this case PT Asuransi Artarindo, is not responsible for losses that occur if the insured object is used or stored in a place different from the provisions in the policy.

Article 276 of the Commercial Code reads: "No loss or damage caused by the fault of the insured shall be charged to the insurer. In fact, he may continue to hold or collect his premium, if he has begun to bear the danger."

From the above article of Article 276 of the Commercial Code, it can be interpreted that the insurer is allowed not to be liable if the loss or damage incurred is the fault of the insured. If the insurer starts to assume the danger, the insurer is also allowed to collect the premium from the insured party. In this context, if the insured object is used or stored in a place different from the provisions in the policy and then suffers loss or damage, it can be categorized as the fault of the insured party itself and the insurance company is allowed not to be responsible for the losses incurred.

**c. "In the event that the location where the insured Property is usually stored as stated in the Policy changes or undergoes a change in shape, repair or similar work."**

This can be interpreted that the Insurer, in this case PT Asuransi Artarindo, is not responsible for losses that occur if the insured object undergoes significant changes.

Article 294 of the Commercial Code reads: "The insurer is relieved of his obligation to fulfill compensation, if he proves that the fire was caused by the fault or gross negligence of the insured himself."

From the above article of Article 294 of the Commercial Code, it is known that this provision applies to insurance of losses caused by fire due to the negligence of the insured. If interpreted extensively, in relation to the Insurance Policy of PT Asuransi Artarindo, it is appropriate if PT Asuransi Artarindo is not responsible for losses incurred if the insured object undergoes changes in shape, repairs or similar work. This is because, changes in shape, repairs or similar workmanship can be classified as the fault of the insured himself who does not carry out his obligations to store in the place or in the manner stated in the policy.

**d. "In the event that other circumstances arise which are part of a material change in the contents of the Policy or Application Letter, or in the event that the danger threatening the insured Property increases materially."**

This can be interpreted that the Insurer, in this case PT Asuransi Artarindo, is not responsible for losses incurred if there are material changes or the insured object experiences an increased threat of danger.

Article 293 of the Commercial Code reads: "If a building that is insured is intended for other uses, and therefore there is a possibility of more fire hazards, so that if it had existed before being insured, the insurer would not insure at all or not on the basis of the same conditions as that, then his obligations cease."

From the above article of Article 293 of the Commercial Code, it is known that the provision applies to the insurance of losses caused by fire due to the negligence of the insured. If interpreted extensively, in relation to the Insurance Policy of PT Asuransi Artarindo, it is appropriate if PT Asuransi Artarindo is not responsible for losses incurred if the insured object experiences an increase in the threat of danger.

Insurance activities that involve insurance companies as PUJK and the insured as consumers also need to be subject to the principles of consumer protection to ensure that the interests of the insured are protected and that the services provided by the insurer are in accordance with existing regulations. There are 5 (five) principles of consumer protection as contained in Article 2 of the Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector which reads:

"Consumer and Community Protection in the financial services sector applies the principles of:

- a. adequate education;
- b. openness and transparency of information;
- c. fair treatment and responsible business conduct;
- d. protection of Consumer assets, privacy, and data;

e. effective and efficient complaint handling and dispute resolution."

From the five principles of consumer protection above, the author argues that related to the inclusion of the coverage termination clause in the insurance policy is the principle in point c, namely the principle of fair treatment and responsible business behavior. From this principle, insurance companies in carrying out their business activities are required to be fair, non-discriminatory and responsible for the interests of the insured party. Insurance companies should not conduct business activities whose focus is only to seek as much profit as possible, but must take into account the needs of the insured before offering their insurance products.

In preparing an insurance policy, insurance companies must pay attention to the principle of propriety in an agreement. This principle pressures insurance companies to behave properly in all insurance activities. The link in the research which discusses the termination of coverage clause is that in preparing the insurance policy, the insurance company must be able to ensure that the provisions in it are appropriate and easily understood by the insured as a consumer.

## **2. Legal consequences of the inclusion of the coverage termination clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo**

In an agreement, legal consequences are born from the existence of a legal relationship in the form of rights and obligations (Barkatullah, 2017). In the context of insurance, the insurance agreement or policy contains the rights and obligations of the insured party and the insurer. The ongoing relationship between the insured and the insurance company as the insurer is legally bound due to an agreement. The attachment is in the form of voluntary

willingness on the part of the insured and the insurer in carrying out their rights and obligations (Purgito, 2022).

The agreement is considered valid and has legal consequences if it has fulfilled the four conditions for the validity of the agreement contained in Article 1320 of the Civil Code which reads:

"In order for a valid agreement to occur, it is necessary to fulfill four conditions;

1. agreement of those who bind themselves;
2. capacity to make an agreement;
3. a certain subject matter;
4. a cause that is not prohibited."

The legal consequences related to the validity of the agreement are divided into 2 (two), namely:

1. The agreement can be canceled
2. The agreement is null and void

An agreement can be canceled if the subjective conditions consisting of the conditions "agreement of those who bind themselves" and the conditions "ability to

make an obligation" are not fulfilled. Agreements can be canceled by parties who do not agree or who are not legally capable, as stipulated in Article 1331 of the Civil Code which reads:

"Therefore, people who in the last article are declared incapable of making an agreement, may demand the cancellation of the agreement they have made in the event that the power to do so is not excluded by law."

Agreements are still considered valid and have binding legal force before they are declared null and void or filed for annulment.

An agreement that is declared null and void means that the agreement is considered never created if the objective conditions as stated in points 3 and 4 of Article 1320 of the Civil Code are not met. The objective conditions are "a certain subject matter" and "a cause that is not prohibited".

The legal consequences of the inclusion of the coverage termination clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo can be explained to the maximum if the four conditions for the validity of the agreement are described as clearly as possible.

### **1. The first condition, "agreement of those who bind themselves"**

According to the Big Indonesian Dictionary, "agreement is something that is agreed upon". There is no agreement that arises only from one party, but arises from all parties in an agreement. In the discussion of this insurance policy, the insured party and PT Asuransi Artarindo have agreed to enter into an insurance agreement. The proof that the insured party agreed to the insurance agreement is the payment of premiums to the insurer after an insurance product offer.

### **2. The second requirement, "the ability to make an obligation"**

According to the Big Indonesian Dictionary, "capability is ability; ability; cleverness or proficiency in doing something". Basically, everyone is considered capable, as referred to in Article 1329 of the Civil Code which reads,

"Every person is authorized to make an obligation, unless he is declared incapable of doing so."

People who are declared incapable of making an obligation are regulated in Article 1330 of the Civil Code which reads:

"Those who are incapable of making agreements are;

1. children who are not yet mature;
2. persons placed under guardianship;
3. women who have married in matters determined by law and in general all persons who are prohibited by law from making certain agreements."

In the discussion of this insurance policy, the insured party and the Insurance Company PT Asuransi Artarindo cannot be categorized as incapable people, so it can be said that the requirement of capability has been fulfilled.

### **3. Third requirement "a certain subject matter"**

This requirement is related to Article 1333 of the Civil Code which reads:

"An agreement must have a subject matter in the form of an item of at least a specified type. The amount of the goods need not be certain, provided only that the amount can then be determined or calculated."

The word "goods" in the above article must be interpreted in a broad sense, so that it is not only in the form of objects, but also includes services (Gumanti, 2012). In insurance activities, there must be insured interests, as in insurance law known as the principle of absolute interests and must already exist when insurance is held. In the discussion of this insurance policy, the insured party has an interest in transferring the risk of his property to the insurer.

#### 4. Fourth condition "a cause that is not prohibited"

Another term for this condition is "lawful cause". Article 1337 of the Civil Code states that:

"A cause is forbidden, if the cause is prohibited by law or if the cause is contrary to decency or public order."

In the discussion of this insurance policy, it is true that the inclusion of the coverage termination clause in Article 7 of the PT Asuransi Artarindo Insurance Policy is in accordance with Article 11 letter k of the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products and Articles 250, 274, 293, 294 of the Commercial Code.

The four legal conditions of the agreement have been described and associated with the inclusion of the termination of coverage clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo, the result of which is that the four legal conditions of the agreement have been fulfilled. The subjective requirement has been fulfilled, so it is unfounded if the Insurance Policy of PT Asuransi is canceled. The objective requirements have also been fulfilled, so it is not appropriate if the Insurance Policy of PT Asuransi Artarindo is null and void. The Insurance Policy of PT Asuransi Artarindo remains valid, has legal force, and is binding on the parties.

The insurer and the insured are still obliged to comply with the provisions in the policy and positive law in Indonesia. According to the principle of *pacta sunt servanda* or what is also called the principle of legal certainty in Article 1338 paragraph (1) of the Civil Code which reads:

"All agreements made in accordance with the law shall apply as law to those who make them."

Article 1338 paragraph (1) of the Civil Code above can be interpreted that if the agreement has been made as stipulated in the law, it applies as law to the parties. In the context of insurance, it can be interpreted that if the Insurance Policy of PT Asuransi Artarindo has been made as stipulated in the law, the insurer and the insured must comply with the provisions in the policy.

Insurance companies actually exist to bear risks, but the insured party is also obliged to try to minimize existing losses as stipulated in Article 283 of the Commercial Code.

Some of the provisions in the Insurance Policy of PT Asuransi Artarindo that need to be considered by both parties, both the insurer and the insured, so as not to be said to be in default, namely the provisions regarding what are their rights and obligations.

## CONCLUSION

1. The inclusion of the coverage termination clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo is in accordance with the provisions in Article 11 letter k of the Financial Services Authority Regulation Number 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products and Articles 250, 274, 293, 294 of the Commercial Code.
2. The legal effect of the inclusion of the termination clause in Article 7 of the Insurance Policy of PT Asuransi Artarindo is that there are no things that can cancel this policy because the subjective requirements of the agreement in the form of agreement requirements and capacity requirements have been fulfilled. This policy will also not be null and void because the objective conditions of the agreement in the form of a condition of a certain thing and a condition of a lawful cause have been fulfilled.

## Suggestion

1. For insurance companies, especially PT Asuransi Artarindo, to make policies with language that is not wordy so that policyholders can understand the provisions in the policy easily;
2. For the Financial Services Authority to carefully examine insurance products so that the products offered are in accordance with the provisions in the laws and regulations when they reach the policyholders;
3. For the insured to read carefully the provisions in the insurance policy.

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