

**ESTABLISHMENT OF HONESTY PRINCIPLES APPLICATION POLICY IN FIRE INSURANCE AGREEMENTS IN INDONESIA**

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**Abstract**

A form of insurance that guarantees loss and damage due to fire or the risk of its expansion affecting the object of coverage Objects that can be insured are in the form of your property in the form of residential buildings, shop houses, warehouses, factories, office buildings, hotels, household furniture, home appliances, machinery , merchandise, inventory of raw materials or finished goods, and so on in accordance with the Indonesian Fire Insurance Standard Policy (PSAKI). This insurance is also known as All Property Risk Insurance. In the law or insurance agreement there is the principle of honesty. the principle of honesty is the principle for every insurance agreement that is in the provisions of the Civil Code. Article 251 of the Commercial Code also regulates good faith or honesty, this is because insurance agreements have special characteristics, compared to other agreements in the Civil Code. The Insured must be aware that it has an obligation to provide true, honest and complete information regarding the condition of the insured object. Article 251 emphasizes that the principle of good faith or honesty is only for the insured. Insurance is one type of special agreement regulated in the Commercial Code as an agreement, so the provisions of the legal terms of an agreement in the Civil Code also apply to insurance agreements. The legal terms of an agreement are regulated in Article 1320 of the Civil Code, there are 4 valid conditions for an agreement, namely the agreement of the parties, the authority to act, certain objects, and lawful causes.

Keywords: Policy Formation, Honesty Principle, Fire Insurance

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**INTRODUCTION**

Policy formation and policy formulation at first glance are similar concepts, but in fact both are completely different concepts even though the two cannot be clearly separated. The process of public policy formation (policy formation) involves decision-making activities that tend to have broad ramifications, have a long-term perspective and use critical resources to seize acceptable opportunities in changing environmental conditions. (Frank T. Paine and Williath Naumes, 1974:4-5) Policy formation is a dynamic social process with an inherent intellectual process. This means that the process of policy formation is a process that involves social processes and intellectual processes.

Policy formation involves broad ramifications. This means that policy-making activities relate to the whole system, such as changes in organizational goals or changes in management strategy that have implications for the entire organization. (Budi Winarno, 2014:95). In policy formation the individuals involved in policy formation receive, analyze, and choose among alternatives, relating to elements, policies, such as the main mission, broader organizational goals, policies and strategies. These patterns are more similar to decision-returning models which are based on comprehensive rational theory. (Budi Winarno, 2014:96)

The comprehensive rational theory in making a policy whose product is a decision can be used in the implementation of a policy of applying a rule of law which we know as legislation. Thinking rationally cooperatively means placing the logic of thinking that underlies why a statutory regulation is formed and implemented. One of the results of logical thinking in the field of law is the policy of Law Number 40 of 2014 concerning Insurance. The Insurance Act regulates the types of insurance, one of which is fire insurance. The formation of a fire insurance policy in the form of a fire insurance agreement has not shown the balance of the parties between the insured and the insurer.

Fire Insurance is an insurance product that covers the risk of loss or damage to your property against the risks covered by the Indonesian Fire Insurance Standard Policy. This insurance is also known as All Property Risk Insurance. (<https://www.tokiomarine.com/id>)

Every decision taken by humans in living their lives is always filled with risks. Risk is the possibility of loss that will be experienced, caused by a hazard that may occur, but it is not known in advance whether it will occur and when it will occur. (Radiks Purba, 1992:29) More broadly, risk is defined as a hazard, consequence or consequence that can occur due to ongoing processes or certain events that will occur in the future. Risk is something that is always faced by humans and its nature is very uncertain. Therefore, insurance views risk as uncertainty or uncertainty. (<https://www.cermati.com/article>).

In insurance, risk can be caused by personal activities or business activities. Examples of personal risk are illness, accident, or financial risk caused by the death of someone. Examples of business risks are bankruptcy, loss or damage caused by various things such as fire, natural disasters and so on. This also applies to health insurance, car insurance, or travel insurance. (<https://www.cermati.com/articles>)

Risk is also defined as an uncertain loss (uncertainty of financial loss) in which there are two elements, namely: uncertainty and loss. Because the magnitude of this risk can be measured by the value of the goods that experience events beyond the fault of the owner, the risk can be transferred to the insurance company in the form of payment of insurance claims. This risk transfer is offset in the form of premium payments to the insurance company (the insurer) every month or year, depending on the agreement contained in the policy. The benefits of this risk transfer are obtained by the insured. (Radiks Purba, 1992:29)

The formulation of an agreement or agreement policy in general has been regulated in book III of the Civil Code. more. So, an agreement is a legal relationship between two or

more parties based on an agreement to cause legal consequences. Legal relationship is a relationship which consequently is regulated by law.

According to Subekti, an agreement is an event where one person promises to another or the two people promise each other to carry out something. From this event, a relationship arises between the two people which is called an engagement. The agreement publishes an agreement between the two people who make it. In its form, the agreement is in the form of a series of words containing promises or promises that are spoken or written. (Subekti, 2001:1)

According to Sudikno Mertokusumo, an agreement is a legal relationship between two or more parties based on an agreement to cause legal consequences. The point is that both parties agree to determine the rules or rules or rights and obligations that bind them to be obeyed and implemented. The agreement is to cause legal consequences, namely to give rise to rights and obligations, so that if the agreement is violated there will be legal consequences or sanctions for the violator. (Sudikno Mertokusumo, 1986:97-98)

Thus, the relationship between the engagement and the agreement is that the agreement issues the engagement. The agreement is the source of the engagement, in addition to other sources. An agreement is also called an agreement, because the two parties agree to do something. It can be said that the two words (covenant and agreement) are the same in meaning. (Sudikno Mertokusumo, 1986:97-98)

Sahya Anggara quoting the opinion of Jones (1976) said that in formulating regulatory policies there are basic policy elements concerning matters that reflect the need for a logical understanding, institutional involvement and formalization of a process or mechanism that must be taken in the framework of policy making. In a contextual perspective, the variables that need to be considered in the formulation of a policy, one of which is to develop perceptions or definitions. The substance/material of the policy needs to be explained clearly, including the background and problems that prompted the need to raise the policy idea. It is hoped that a clear and firm definition will not lead to multiple perceptions of the substance of the policy. (Sahya Anggara, 2014:

The word of agreement in an agreement is an essential or first element for the validity of an agreement according to Article 1320 of the Civil Code. If any of the properties contained in the Article are not fulfilled or there is coercion, error, or fraud, the agreement can be canceled. This is a defect in an agreement that has been agreed upon by both parties. If the agreement is violated, the party who feels aggrieved can demand that the other party be subject to sanctions or penalties. Because insurance is included in the agreement, sanctions or penalties are also applicable for those who violate it.

According to Subekti, insurance or coverage is an agreement that is included in the chancy agreement (*kansovereenkomst*). A chance agreement is an agreement that is intentionally hung on an event that does not necessarily occur, which event will determine the benefit of one of the parties. There are 2 (two) parties involved in insurance, namely the insurer as the party who is able to guarantee and bear the other party who will receive a compensation for the loss that may be suffered as a result of an event that does not necessarily occur and the insured party will receive compensation. , in which the insured party is required to pay a sum of money to the insurer. (Subekti, 2001:217) Meanwhile, Abbas Salim, in his book provides the following definition, Insurance is a willingness to determine small (slightly) certain losses as a substitute for large uncertain losses. It can be concluded that, people are willing to pay a small loss for the present, so that they are used to facing large losses that may occur in the future. (Abbas Salim, 2003:1)

Insurance is one type of special agreement regulated in Law Number 40 of 2014 concerning Insurance. Article 1 Number 1 explains the definition of insurance. Insurance is an agreement between two parties, namely the insurance company and the policy holder, which is the basis for receiving premiums by the insurance company in return for: a. provide

compensation to the insured or policy holder due to loss, damage, costs incurred, loss of profit, or legal liability to third parties that may be suffered by the insured or policy holder due to the occurrence of an uncertain event; or b. provide payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management. As an agreement, the provisions of the legal terms of an agreement in the Civil Code also apply to insurance agreements. The legal terms of an agreement are regulated in Article 1320 of the Civil Code, there are 4 valid conditions for an agreement, namely the agreement of the parties, the authority to act, certain objects, and lawful causes. In making a perception or definition of the legal terms of the agreement, it is necessary to pay attention to the principle of honesty. The legal terms of an agreement are regulated in Article 1320 of the Civil Code, there are 4 valid conditions for an agreement, namely the agreement of the parties, the authority to act, certain objects, and lawful causes. In making a perception or definition of the legal terms of the agreement, it is necessary to pay attention to the principle of honesty. The legal terms of an agreement are regulated in Article 1320 of the Civil Code, there are 4 valid conditions for an agreement, namely the agreement of the parties, the authority to act, certain objects, and lawful causes. In making a perception or definition of the legal terms of the agreement, it is necessary to pay attention to the principle of honesty.

In essence, the principle of honesty is the principle for every insurance agreement that is in the provisions of the Civil Code. The formulation of policies regarding the application of the principle of honesty as one of the conditions for the validity of the agreement places the principle of honesty into a study, especially the application of the principle of honesty in fire insurance.

Based on the description of the background above, the problem is how to form a policy to apply the principle of honesty in fire insurance in Indonesia? What are the procedures and procedures for submitting a fire risk claim based on a standardized fire insurance policy?

## **LITERATURE REVIEW**

### **Policy Formulation**

The term public policy refers to a wider set of implementing tools than laws and regulations, including aspects of the budget and implementing structure. The public policy cycle can be related to policy making, policy implementation, and policy evaluation. Public involvement in every stage of policy can be a measure of the level of state compliance with the mandate of the people who are sovereign over it. To become a policy agenda, namely a series of issues to be resolved and their priorities, can the public provide input that will influence the content of public policies that will be produced. Likewise at the implementation stage, can the public monitor implementation deviations, as well as whether there is a public control mechanism, (Sahya Anggara, 2014: 38)

Public policy refers to the wishes of the ruler or government which ideally in a democratic society is a reflection of public opinion (public opinion). To realize this desire and make policies effective, a number of things are needed. First, there are legal instruments in the form of laws and regulations so that the public can know the policies that have been decided. Second, this policy must also have a clear implementation and financing structure. Third, there is a need for public control, namely a mechanism that allows the public to know about this policy which in its implementation does not experience deviations. In an authoritarian society, public policy is the desire of the rulers alone so that the above description does not work. In a democratic society, what is often a problem is how to absorb public opinion and build a policy to get public support. (Sahya Anggara, 2014: 38)

The ability of political leaders to communicate with the people, to accommodate their wishes is one thing, but equally important is the ability of leaders to explain to the people

why a wish cannot be fulfilled. Charles Lindblom (1939) stated that policy is closely related to decision making because they both choose between the available options. The public terminology shows an extraordinary breadth to be defined. However, in this case the public is closely related to the state, market, and civil society. The three of them become actors in the public arena so that the public can be understood as a dimensional space that shows the interaction between the three actors. (Sahya Anggara, 2014: 39)

In its implementation, public policy must be revealed in a series of implementation instructions and technical instructions that apply internally to the bureaucracy. Based on the community side, what is important is the existence of a public service standard that describes to the community the services that are their rights, how to get them, the requirements, and the form of the service. This will bind the government (state) as the service provider and the community as the service recipient. The political focus on public policy brings political studies closer to state administration because the unit of analysis is the decision-making process up to evaluation and monitoring, including its implementation. By taking this focus, does not rule out the possibility of using political power or political culture as an independent variable in an effort to explain certain public policies as the dependent variable. (Sahya Anggara, 2014: 39)

Public policy in state administration and governance practices, according to Nugroho (2004: 100-105), is basically divided into three principles, namely:

- a. how to formulate public policy (policy formulation)
- b. how public policy is implemented
- c. how public policy is evaluated

According to Said Zainal Abidin (2004: 56-59), not all public policies have the same priority for processing. This is determined by a screening process through a series of criteria. The following criteria can be used in determining policies.

- a. Effectiveness, measuring an alternative target that is achieved with an alternative policy can produce the desired final goal.
- b. Efficient, the funds used must be in accordance with the objectives achieved.
- c. Simply, a policy can achieve the expected results with the available resources.
- d. Fair.
- e. Answered, policies are made in order to meet the needs of a particular group or problem in society.

In general, according to Said Zainal Abidin (2004: 31-33), policies can be divided into three levels, namely as follows.

- a. Public policy is a policy that becomes a guideline or implementation guide, both positive and negative, which covers the entire territory or agency concerned.
- b. Implementation policies are policies that describe general policies. For the central level, government regulations regarding the implementation of a law.
- c. Technical policy is an operational policy which is under the implementation policy.

Regarding the technical level of public policy, the State Administration Institute (1997) stated as follows.

- a. National Scope

- 1) National Policy

National policies are state policies that are fundamental and strategic in achieving national/state goals as stated in the Preamble to the 1945 Constitution. The MPR, the President, and the DPR are authorized to determine national policies. National policies set forth in laws and regulations can be in the form of the Constitution, MPR Decrees, Laws (UU), Government Regulations in Lieu of Laws (PERPU).

**2) Public policy**

General policy is the policy of the President as the implementation of the Constitution, TAP MPR, UU, to achieve national goals. The President has the authority to determine general policies. Written general policies can be in the form of Government Regulations (PP), Presidential Decrees, and Presidential Instructions.

**3) Implementation Policy**

The implementation policy is an elaboration and general policy as a strategy for implementing tasks in certain fields. In determining the implementation policy, the authorities are ministers/ ministerial-level officials and the leadership of the LPND. Written implementation policies can be in the form of regulations, decisions, or official instructions.

**b. Scope of the Territory****1. Public policy**

The general policy in the regional scope is the policy of the regional government as the implementation of the principle of decentralization in order to regulate the affairs of the Regional Household. In establishing general policies in the province, the governor and the provincial DPRD are in charge. In Regency/City areas, it is determined by the Regent/Mayor and Regency/Municipal DPRD. General policies at the regional level can be in the form of Provincial Regulations and Regency/City Regional Regulations.

**2. Implementation Policy**

- a) implementation policy in the context of decentralization is the realization of the implementation of Regional Regulations;
- b) implementing policies in the context of deconcentration are the implementation of national policies in the regions;
- c) implementation policy in the context of co-administration (medebewind) is the implementation of the tasks of the Central Government in the Regions organized by the Regional Government.

The following are authorized to determine implementation policies, among others:

- a) in the context of decentralization is the Governor/Regent/Mayor;
- b) in the context of deconcentration is the Governor/Regent/Mayor;
- c) in the context of co-administration is the Governor/Regent/Mayor;
- d) in the context of implementing decentralization and assistance tasks in the form of Governor/Regent/Mayor Decrees and Instructions;
- e) in the context of implementing deconcentration in the form of a Governor/Regent/Mayor Decree;

**RESEARCH METHODS**

The research method in this study is a qualitative research method. This research method was conducted in order to gain an in-depth understanding, develop theories, describe the reality and social complexities of public policy in the application of the principle of honesty to fire insurance.

**DISCUSSION****1. Formation of Policies on the Application of the Principle of Honesty in Fire Insurance Agreements in Indonesia**

Insurance is one alternative that is a solution to this uncertainty. An insurance company is established to provide various services such as protection for life, damage to property owned by customers or prospective insurance customers. Damage to the property can be in the form of or caused by natural disasters, fires, collisions for motorized vehicles, and so on. Furthermore, there are also insurance services in terms of preparation for the future in the

form of insurance plus savings services for children's education, facing retirement and old age. Insurance does provide a lot of benefits to the community, but insurance is something that is reluctant to be followed because of ancient problems that are often faced, The problem is not far from the settlement of claims that are considered difficult and convoluted by the insured or the beneficiary's heirs. Fulfillment of insurance claims is an obligation that must be carried out by the insurer, this is a consequence of the implementation of the agreement as stated in Article 1234 of the Civil Code, "every engagement is to give something, to do something, or not to do something". In the context of an insurance agreement, the subject is an agreement to do something. For the insurer, it is the insurer's promise to provide compensation for the loss or loss or liability that arises or legal insurance benefits. this is a consequence of the implementation of the agreement as stated in Article 1234 of the Civil Code, "every engagement is to give something, to do something, or not to do something". In the context of an insurance agreement, the subject is an agreement to do something. For the insurer, it is the insurer's promise to provide compensation for the loss or loss or liability that arises or legal insurance benefits. this is a consequence of the implementation of the agreement as stated in Article 1234 of the Civil Code, "every engagement is to give something, to do something, or not to do something". In the context of an insurance agreement, the subject is an agreement to do something. For the insurer, it is the insurer's promise to provide compensation for the loss or loss or liability incurred or legal insurance benefits. (Junaidi Ganie, 2013:67)

Insurance also adheres to special principles or principles, as *lex specialist* from article 1320 of the Civil Code. These principles include: first, the principle of insurable interest, this principle emphasizes that an insured must have a relationship with the insured object. Second, the principle of absolute good faith, where an insured is obliged to inform about the object being insured. Third, the principle of indemnity, an insured only gets compensation for the loss borne. Fourth, the principle of subrogation, an insured is not justified in asking for compensation from another party who causes a loss. (Mehr and Cammack, 1981:30-40) These four principles are the most widely used, although there are other principles. Relating to the principle of utmost good faith, or also known.

With perfect honesty, is the most important principle in the insurance agreement. The application of this principle in insurance practice, among others, occurs when the insured completes the insurance request form. This means that it is not just a good faith, but more than that it is the perfect honesty of the insured party in disclosing all the facts regarding his/her condition, health and wealth/property to the insurer. This principle also applies to the insurer (life insurance company), namely the obligation to explain the guaranteed and excluded risks clearly and thoroughly, which can be done through their agents. (Bronto Hartono, 2005:34)

*Principle of utmost good faith* Also referred to as the principle of perfect good faith or the principle of perfect honesty (*uberrimae fidei*). From this principle, it can be stated that the insured is obliged to inform the insurer about a fact and the main things he knows, as well as matters relating to the risks to the insurance carried out. Incorrect information and information that is not submitted can result in the cancellation of the insurance agreement. (Strong Ismanto, 2003:296)

This principle of honesty is basically the principle for every agreement so that it must be fulfilled by the parties to the agreement. Failure to fulfill this principle at the time of closing an agreement will result in a defect of will, as the meaning of all the basic provisions regulated by articles 1320-1329 of the Civil Code. After all, good faith is one of the main foundations and trust that underlies every agreement and the law basically does not protect parties with bad intentions. Although in general good faith has been regulated as stipulated in

the Civil Code specifically for insurance agreements, it is still necessary to emphasize the principle of honesty.

In the context of the agreement of the parties taking legal action, it will be initiated and there will be good faith in doing so. In other words, legal certainty arises with the awareness of the public who have reached an agreement to enter into an agreement based on good faith. Good faith itself has been explained in the Civil Code Article 1338 of the Civil Code which reads "Agreement must be carried out in good faith." In the article it is explained that an agreement or agreement must be carried out in good faith, but nothing explicitly regulates the intention of the good faith so that no measure of good faith is carried out. According to James Gordley, as quoted by Ridwan Khairandy, "it is in fact very difficult to define good faith." (Ridwan Khairandy, 2003: 129-130)

According to Wirjono Prodjodikoro and Soebekti, good faith (*te goeder trouw*) which is often translated as honesty, is divided into two types, namely; (1) good faith when entering into a legal relationship or agreement, and (2) good faith when carrying out the rights and obligations arising from the legal relationship. (Riduan Syahrani, 2000: 260)

Principles in the agreement, the word principle has the meaning of basic guidelines or something truth which is the basic principle based on the mind. So, the principle is a main idea that underlies the existence of an activity. The principles used in the agreement include the principle of consensualism, the principle of freedom of contract, the principle of personnel, the principle of binding agreements, the principle of honesty and good faith.

## **2. Procedures and Procedures for Submitting a Fire Risk Claim Based on a Standardized Fire Insurance Policy**

The establishment of a policy of applying the principle of honesty has not yet been seen in the laws and regulations governing insurance, especially fire insurance. Policies in the form of insurance law politics that are run by the government are currently contained in Law Number 40 of 2014 concerning Insurance and the Commercial Code Article 290 of the KUHD states that what is meant by fire insurance is insurance that guarantees loss or damage to property (property). fixed and movable property) caused by a fire that occurred due to own fire or fire from outside due to bad air, carelessness, mistakes or inappropriate actions from the service of the insured, neighbors, enemies, robbers, and whatever, and in any way cause of fire. (Insani Ritonga Image, 2021:4)

In the application for a fire risk claim based on the standardization of a fire insurance policy, the claimant must complete the documents relating to the destruction of the property of the insured who has been insured by the insurer, namely:

1. Application letter for insurance claim as a support for other documents that prove that it is true that there has been a fire incident that occurred due to negligence borne by the insurer.
2. By attaching a letter resulting from a police investigation into the fire incident which did not occur due to engineering or intentional action on the part of the insured Samrida but, due to negligence that resulted in the fire occurring which should be borne by the insured and the insurer. (Zian Farodis, 2014:44)
3. Photographs of evidence that a fire has occurred by the insured.

In principle, the procedures and procedures for claiming insurance to the insurer can be divided into:

1. Claims for partial loss (partial loss).
2. Claim total loss (total loss).
3. Business interruption (BI) claims.

In the event of a fire accident, the customer must immediately report it to the insurance company (the insurer). The customer needs to provide an explanation of the incident and a



written statement regarding the actual chronology. The report should be submitted orally by coming to the insurance office, or by letter, facsimile, and e-mail. This report must be made immediately, a maximum of 7 calendar days. (Citra Insani Ritonga, 2021:69)

Then the respondent is asked to fill out a written report/information explaining the reason for the fire. The form must be readily available at the home fire insurance company. Some columns that must be asked: (Citra Insani Ritonga, 2021:6)

1. Place, date and time of the fire.
2. Cause of fire.

Estimated amount of loss according to customer calculations (estimates). You can complete an explanation regarding burned, destroyed, damaged, lost and saved items within a maximum of 12 months. So the insured can write down items of great value first. After that follow the additional information. Additional or supporting information that may need to be submitted to the insurance company. (Citra Insani Ritonga, 2021:69)

In addition to filling out forms, customers also need to complete supporting documents such as: (Jean otto Ford, 2009:83)

1. Claim form
2. Policy and official report (certificate) from the Village Head or Sub-District Head or the Local Sector Police.
3. Detailed report on cause of fire.
4. Other reasonable evidence requested by the insurance company.

After the insurance company receives notification of a loss, the insurance company will check the validity of the policy. Things to check are:

1. Is there a factor of interest on the object?
2. Is the incident still within the coverage period?
3. Has the premium been paid in full?

After the procedure for checking the validity of the policy, the insurance company will conduct a field inspection to determine: (Mehr and Cammack, 2010:37)

1. Cause of fire
2. Location of the incident
3. Total loss
4. Total price of unburnt buildings, goods, machinery
5. Have the customers also fulfilled their obligations?

Based on the description above, it can be said that the submission of insurance claims made by the insured against the insurer has met the elements of standardization of Indonesian fire insurance policies, because the insured has paid the insurance premium every month determined by the insurer. With the implementation of the insurance premium payment that has been determined by the Insurer, legally the fire insurance policy agreement is binding on both parties and has legal force to be carried out with honesty by both parties.

## **CONCLUSION**

Based on the description above, the conclusion is: So, in this case the principle of honesty in the fire insurance agreement must be fulfilled by the parties who entered into the agreement. Failure to fulfill this principle at the time of closing an agreement will result in a defect of will, as the meaning of all the basic provisions regulated by articles 1320-1329 of the Civil Code. After all, good faith is the main basis and trust that underlies every agreement and the law basically does not protect parties with bad intentions. Although in general good faith has been regulated as stipulated in the Civil Code specifically for insurance agreements, it is still necessary to emphasize the principle of honesty.

Submission of insurance claims made by the insured against the insurer if it meets the elements of standardization of the Indonesian fire insurance policy, because the insured has

paid the insurance premium every month determined by the insurer with honesty. The implementation of payment of insurance premiums that have been determined by the Insurer, legally the fire insurance policy agreement is binding on both parties and has legal force to be implemented with the principles of honesty by both parties.

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