

# Legal Consequences of Changing the Name of Heirs on the Insurance Policy

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**Keywords:** Insurance agreement, name change, and heirs.

**Abstract:** Insurance is an agreement between two parties, was from insurance company and the policy holder. Insurance is an important part of everyday life, it is a part of contract law and also part of inheritance law because it has a value of inheritance that can be inherited. The aim of this study is to analyse the impact of name changing laws on heir on insurance. This type of research are laws normative research. The change of name is made in order that policyholders have opportunity to change some of the wishes on the policies that are already owned by insurance agreements. The regulation on changing the name of the heir according to the insurance law in Indonesia is not regulated in detail. However, in Article 251 of the Commercial Code, it is very clear that there is a need for notification to the parties related to the agreement made whenever there is a change to the deed or agreement. So that the legal consequences of changing the name of the heir have a significant impact so that it needs to be done with caution so as not to be mistaken. The need for legal protection against changes in the name of heirs in the insurance policy so that the parties related to the policy do not change carelessly so that it has an impact on other legal consequences.

## 1 INTRODUCTION

To achieve the goal of being a welfare state, the state needs legal certainty and fairness for the protection of every individual. It is good to feel the impacts of development, as well as guarantees for education, insurance for life, as well as security for proper health. National development lays the foundations for the struggle for national development in realizing society to improve the economy and every field in general (Badruzaman, 2019). In a state-owned arrangement or by the insurance company itself. Appropriate regulation creates confidence in the certainty that arises at a later date after the agreement is made. As well as insurance policies in insurance insurance.

Insurance or coverage is something that is familiar to the people of Indonesia, where most Indonesians have entered into insurance agreements with insurance companies, both state-owned and national private-owned insurance companies. Then the level of risk that occurs in every human activity will also increase, both those that threaten themselves or their property, so that humans try to overcome them. One of the ways humans deal with risk is through transferring risk to other parties, in this case through

insurance institutions. Insurance as a risk transfer and sharing agency has positive benefits for the community, companies and for the development of the country (Badruzaman, 2019).

Insurance as a risk transfer agency. In normal circumstances, usually a person or a business entity must personally always bear all possible losses caused by any event. Usually, the nature and amount of the loss cannot be easily estimated in advance, whether it will be fatal or not. Will it cause losses that you can handle yourself or not. In insurance there is an insurance agreement, while the Civil Code (hereinafter referred to as the Civil Code) states specifically that there is an "agreement" which is a condition that must be met for the validity of the agreement (Joko Tri Laksono, 2018). In order to face all the possibilities referred to above, people try to delegate all possible losses to other parties who are willing to replace their position. The way to transfer risk can be done by entering into an agreement. Which agreement has the objective of the party that has the possibility of suffering a loss (commonly known as the insured) it delegates to another party who is willing to pay compensation (commonly called the guarantor).

This is insurance is a form of protection against ourselves, protection in the form of finance against unexpected events. Insurance itself is protection against unexpected events (evenem). What if a problem occurs, you can still protect your finances by transferring to the insurance company as the insured. In Indonesian society, awareness of insurance is still very little. This uncertain event is a risk that must be borne by the insurance company (insurer) during the current coverage period. The definition of insurance in Law Number 2 of 1992 concerning Insurance Business is not much different from the definition of insurance stated in the Commercial Code. Namely an agreement between two or more parties, whereby the insurer binds himself to the insured, by receiving an insurance premium, to provide reimbursement to the insured. Due to loss, damage or loss of expected benefits, or legal liability to third parties that the insured may suffer, arising from an uncertain event, or for payments based on the death or life of the insured person. Insurance participants are required to pay a certain amount of money as a contribution to the insurance company as fund manager. Insurance participants will have the right to claim compensation funds if there is a risk (Aidi, 2018). We can see that the percentage of life insurance policy holders in Indonesia is only 5%, which means that 265 million of the population is only 13 million people who are protected by life protection.

For example, in several years since 2000 there were insurance companies that went bankrupt. This is due to bad intentions or because of a lack of supervision over insurance companies. This raises a sense of distrust in our society towards insurance companies. Some of the things that happen are when changes to the contents of the policy or data in the policy which we know as endowment, which is a change in the insured's data in the policy or to the insured object. As is known in insurance, especially in life insurance, there is a sum insured, which is quite a fantastic figure. With the endorsement, it often creates a desire for people to do evil to change the content or change the existing inheritance to become the property of one of the heirs or in whole or in part without the knowledge of the policy holder or by committing a criminal act.

Life insurance is a form of cooperation between people who want to reduce or avoid future risks and accidents. It is impossible for a person to know what the next day will bring. Therefore, to reduce the risks that may arise as a result of these things, people enter into "reciprocal" insurance agreements, meaning that each party has rights and also has obligations that must be implemented.

This is enough to become a dilemma for the community to take out insurance. As a follow-up in order to create a consumer dispute resolution system that is simple, fast and costs raised, the financial services authority issued a regulation on dispute resolution (Rahmawati & Rai Mantili, 2016). Whether to help individuals who have good faith or utmost good faith is a basic basis and trust that is the basis of every agreement including insurance agreements, and basically the law does not protect parties with bad faith. As a reference for the principle of good faith which is regulated in Article 1338 paragraph (3) BW, all insurance agreements are specifically regulated in Article 251 of the the Commercial Code. The principle contained in Article 251 of the Commercial Code is basically the principle of utmost good faith. This is enough to become a dilemma for the community to take out insurance. As a follow-up in order to create a consumer dispute resolution system that is simple, fast and costs raised, the financial services authority issued a regulation on dispute resolution (Rahmawati & Rai Mantili, 2016). Whether to help individuals who have good faith or utmost good faith is a basic basis and trust that is the basis of every agreement including insurance agreements, and basically the law does not protect parties with bad faith. As a reference for the principle of good faith which is regulated in Article 1338 paragraph (3) BW, all insurance agreements are specifically regulated in Article 251 of the Commercial Code. The principle contained in Article 251 of the Commercial Code is basically the principle of utmost good faith. A change in the name makes a legal change that is different from the original agreement. The act of it affects how the continuation of the law runs on the contract. Because after all the agreement is a binding law to the parties that bind it in the agreement. Therefore, it becomes a problem if the binding of the agreement is not maintained.

So that in this paper it is hoped that it can create an impetus for oversight that causes a balance of regulation and enforcement that achieves the goals of the country from the point of view of regulations and regulations in the insurance sector. Knowing how the arrangements for changing the name of heirs and insurance arrangements, regarding legal protection against changes in the name of heirs, and knowing the legal consequences of changing names. This principle of perfect good faith is a lex specialist of good faith based on the provisions of civil law. Then this is what makes the author want to examine the "legal consequences of changing the name of heirs on the insurance policy".

From the existing problems, it raises the problem formulation of this research, namely, how does the change in the name of the heir according to the insurance law, the legal consequences of changing the name of the heir, legal protection against the change in the name of the heir.

## 2 RESEARCH METHODS

The research was conducted by juridical normative, namely the method of legal research carried out by the library method. The data taken from this research comes from the 1945 Constitution; Civil Code; Trade Law; and Law no. 40 of 2014 concerning Insurance.

In relation to normative research, approaching the law and concepts. This approach looks at the relationship between legal rules from various sides and also the object of research, namely understanding how to regulate and protect the change in the name of heirs in insurance. That insurance are from one of insurance at Medan city, Indonesia. That this research point at how Indonesia laws about insurance are. And how that they doing their clien from protection against the change in the name of the heir.

From the existing problems, three things were examined, namely, how to regulate the change in the name of the heir according to the insurance law, what is the legal effect on changing the name of the heir, and legal protection against the change in the name of the heir.

## 3 RESEARCH RESULTS AND ANALYSIS

### 3.1 Regulations for Changing the Name of Heirs According to the Insurance Law

In its development, insurance law in Indonesia originated from the Civil Law brought by the Dutch royal government to Indonesia during the colonial period. The existence of Indonesian Insurance Law is rooted in a Codification of Civil Law (Code Civil) and Commercial Law (Code de Commerce) in the early nineteenth century during the reign of the emperor Napoleon in France. At that time, the Dutch Commercial Law only made articles regarding marine insurance until it was promulgated in the Code of Trade Law (Wet Boek van Koophandel) of 1838 regarding regulations on life insurance, fire

insurance, and insurance for crops. And until now, this is what Indonesia has adhered to today.

This is followed, then regulated in statutory regulations. Then, in line with its development, a Law was formed. In its development, insurance law in Indonesia originated from the Civil Law brought by the Dutch government to Indonesia during the colonial period. The existence of Indonesian Insurance Law is rooted in a Codification of Civil Law (Code Civil) and Commercial Law (Code de Commerce) at the beginning of the nineteenth century during the reign of the emperor Napoleon in France (Junaedy Ganie, 2013). At that time, the Dutch Commercial Law only made articles regarding marine insurance until it was promulgated in the Code of Trade Law (Wet Boek van Koophandel) of 1838 regarding regulations on life insurance, fire insurance, and insurance for crops. And until now, this is what Indonesia has adhered to today.

Legal provisions can play a role in providing a balance between the parties. Community institutions that are formed must operate in a form that is compatible with everyone regarding what might be their right and those who are most important in society, namely the right to equal concern and respect. The distribution of benefits and social responsibility must be balanced and must appear balanced in the sense that justice as fairness is achieved.

Then the insurance arrangement regulated in the Commercial Code, where the definition of insurance is that according to Article 246 of the Commercial Code, insurance is an agreement, whereby an insurer binds himself to an insured, by receiving a premium, to compensate him for a loss, damage or loss. the expected benefits that he might suffer because of an indefinite event.

Regulation rather than in the policy which is the basis for the insurance arrangement by the company. Regarding the name itself, it is necessary to fill in the form and attachments until a letter of change is issued which we usually refer to as an endrosmen.

In the endrosmen itself, it is very important if the endrosmen cannot be shown together with the original policy at the time of the policy disbursement, the insurance benefit disbursement itself cannot be done. So that the substitution of the identity or the contents of the insurance does not apply at all.

### 3.2 Legal Effects on Change of Name of Heirs

An insurance contract is also called a contingent contract, which is a contract or promise in which the

insurance company will do something depending on the occurrence of an event, in this sense, the insured still has to pay the premium regardless of whether the insurance company carries out its promise or not. Usually in insurance practice, the first step taken by both the insurer and the insured is making an insurance contract. The insurance contract regulates the rights and obligations of both the insurer and the insured as a policy holder. Regulations regarding the rights of policyholders are still subject to general rules, especially those relating to the form and content of policies in the Commercial Code and the Insurance Law. The regulation only regulates in general "lex generalis" about policies, policy holders, and contents but does not specifically regulate the rights of policyholders, especially those related to investments or funds deposited (Rato Dominikus, 2010). Policyholder rights actually have to be formatively regulated by law, especially to protect policyholders from risks or events that do not necessarily occur. In the practice of insurance, a person who is bound by an insurance agreement is usually lulled by promises and benefits in the next few years. Because there is no legal guarantee, it is often difficult to account for insurance practices, especially when the insurance company goes bankrupt or experiences a loss. This insurance system for policyholder rights is very important to regulate, especially regarding the rights in the funds or guarantees provided, especially to policyholders.

In order to achieve this goal, the implementation of economic development must pay more attention to the harmony, harmony and balance of the elements of equitable development, harmony, and balance of the elements of equitable development, economic growth and national stability.

One vehicle that has a strategic role in harmonizing and balancing each of the elements of the Development Trilogy is insurance. This strategic role is mainly due to the main function of insurance as a vehicle that can collect and channel public funds effectively and efficiently, which on the basis of economic democracy supports the implementation of National Development in order to increase equitable development and its results, economic growth and national stability. Towards improving the standard of living of the people at large (Abdulkadir Muhammad, 2015).

The ups and downs of the policy holder depend on the ups and downs of the increase in insured capital (new insurance buyers). Thus, additional reserves (additional reserves) are affected by the increase in the covered capital. In life insurance to determine the amount of risk, many mathematical / statistical

formulas are used, namely a theory called probability theory. In life insurance risk is the risk of death. So the risk factor contains an element of uncertainty (uncertainty or uncertainty). The amount of the degree of risk (level of risk) depends on the size of the deviation (deviation) between what is estimated and the actual event (Guntara, 2016). The more a person gets older the higher the level of risk, and vice versa (Abdulkadir Muhammad, 2015). To find out the level of risk we usually calculate in% (percentage). Example: A ship has a crew of 50 people. Of these, it is estimated that one person was sick during the trip. It turned out that two people were actually sick. Calculate how big the deviation and the level of risk from the data above. Before we calculate the level of risk, we must first know the formula for the level of risk.

The policy should have recorded in detail how then to change the contents of some or the disbursement of funds that will occur. In many insurers claim that the insured does not carry out good faith (breach of utmost good faith) so that the insurance claim submitted is rejected by the insurance company. In many cases, very often the insured's goodwill to do something related to the insurance claim backfires because it turns out that the act violates the terms of the contract. On the other hand, the insured does not know that the good intentions have turned out to be bad, which in turn becomes a gray area where conflicts arise from claims for compensation. It is the obligation of the insurer to explain all matters relating to the insurance contract, including before the contract starts. If the insurer does not explain the rights and obligations of the insured, the insurer has violated the principle of utmost good faith.

Therefore, he can be sued and must be responsible for the compensation suffered by the insured. Nowadays the agreement or contract between an insurer and the insured almost always uses a standard agreement or contract (policy). The use of standard agreements is carried out so that service transactions can be carried out efficiently and practically without any obstacles as a result of "bargaining" before closing an agreement.

### **3.3 Legal Protection against Change of Name of Heirs**

Arrangements regarding insurance agreements are contained in the Civil Code, Commercial Code, Law No.40 of 2014 concerning Insurance Business and other legislation.

The insurance agreement is not specifically regulated in the Civil Code, but the arrangement is contained in the Commercial Code. However, based on Article 1 of the Commercial Code, the general provisions of the agreement in the Civil Code can apply to insurance agreements. With regard to the interests of policyholders, there are several provisions in the Civil Code and the Commercial Code, namely:

- 1) Article 1320 of the Civil Code which regulates the validity of the agreement, namely: agreeing that they bind themselves, the ability to make an engagement, a certain matter, a lawful cause. This provision provides a consequence that policyholders who think that the insurance agreement has occurred due to heresy, coercion and fraud (*dwaling, dwang, and bedrog*) from the insurer can apply for the cancellation of the insurance agreement to the court. If the insurance agreement is declared null and void, either in whole or in part and the insured / policyholder is in good faith, the policyholder has the right to demand a refund of the premium that has been paid.
- 2) Article 1266 of the Civil Code stipulates that the conditions for cancellation are always considered to be included in a reciprocal agreement if one of the parties does not fulfill their obligations. For policyholders this must be considered because of the possibility that the person concerned is late in making premium payments. However, this does not cause the agreement to be canceled by itself, but the judge must ask for cancellation. In practice, it is usually stated in the policy clause that stipulates that the insurance agreement will not run if the premium is not paid on time. This is to prevent any late premium payments from asking the court to cancel it because it is considered impractical.
- 3) Article 1267 is applied in the insurance agreement; If the insurer who has the obligation to provide compensation or an amount of money to the insured has failed to promise, then the policyholder can demand reimbursement of fees, compensation and interest.
- 4) In the insurance agreement, the performance of the insurer depends on events that are not certain to occur. In order to prevent the insurer from adding other requirements in providing compensation or an amount of money, the policy holder must pay attention to the provisions of Article 1253 up to. Article 1262 of the Civil Code.
- 5) Article 1318 of the Civil Code can be used by the heirs of a policy holder to demand that the insurer provide compensation or an amount of money to the insurer. This article stipulates that if a person asks to be promised something, then it is deemed that it is for his heirs and other people. people who have rights thereof, unless it is expressly stipulated that this is not the case.
- 6) Article 1338 contains several principles in the agreement, first, the principle of binding strength. This principle, if connected with an insurance agreement, means that the insurer and the insured / policyholder are bound to carry out the terms of the agreement they have agreed on. The policy holder has a legal basis to demand the insurer to implement Second, the principle of trust implies that the agreement breeds trust between the two parties that each other will fulfill his promise to carry out the achievements as promised. Third, the principle of good faith, which means that all agreements, including insurance agreements, are also interpreted as a whole that in the implementation of the agreement, the parties must heed recognition and propriety.
- 7) Article 1365 regarding unlawful acts can be used by policyholders to sue the insurer if it can prove that the insurer has committed an act that is detrimental to him.  
Several articles in the commercial law book that can be used to protect policyholders, include:
  - a. Article 254 prohibits the parties to the agreement, either at the time of the agreement being entered into or during the life of the insurance agreement from declaring to release things that are required by statutory provisions. This is to prevent the insurance agreement from becoming a gamble or gamble.
  - b. Article 257 and Article 258. If you look at the provisions of Article 255 of the Commercial Code, it is as if the policy is an absolute condition for the formation of an insurance agreement. If you pay attention to Article 257, it turns out that it is not true. In this article it is stated that the insurance agreement is issued immediately after being closed, the reciprocal rights and obligations of the insured and the insurer come into effect from that time. This means that if both parties have closed the insurance agreement but the policy has not been made, then the insured still has the

right to claim compensation if the agreed event occurs. The insured must prove that the insurance agreement has been closed with other means of evidence such as correspondence between the insurer and the insured, underwriter notes, closing notes, and other.

- c. Articles 260 and 261 regulate insurance covered by a broker or agent. From Article 260 it is known that if the insurance agreement is closed through a broker, then the signed policy must be submitted within eight days of being signed. Article 261 stipulates that if there is negligence in the matters stipulated in Articles 259 and 260, the insurer is obliged to provide compensation. In this regard, based on the results of the Insurance Law Symposium, if there is an error by the broker or insurance agent in providing services to the insured, the insurance broker can be prosecuted both civil and criminal.

With regard to efforts to provide protection for consumers, in the *Burgelijk Wetboek* (Civil Code / Civil Code) there are provisions aimed at protecting consumers, as scattered in several articles of book III, chapter V, part II starting from Article 1365 of the Civil Code. In the Indonesian Commercial Code, for example regarding third parties that must be protected, regarding the protection of passengers / cargo in maritime law, provisions regarding intermediaries, insurance, securities, bankruptcy, and so on.

Likewise in the Criminal Code (KUH Pidana), for example regarding counterfeiting, fraud, brand forgery, fraudulent competition, and so on. In customary law there are also principles that support consumer protection law, such as the strong kinship principle of indigenous peoples who are not conflict-oriented, which positions each citizen to respect each other. The principle of magical balance / natural balance, the principle of "light" in transactions (especially land transactions) that require the presence of adat / village heads in land transactions. The principle of social function of a right, the principle of communal rights.

Law No. 8 of 1999 concerning Consumer Protection, the provisions in it regulate the behavior of business actors. This can be understood, because the losses suffered by consumers are often the result of business actors, so the behavior of these business actors needs to be regulated and for violators to be subject to appropriate sanctions. The essence of this

law is to regulate the behavior of business actors with the aim that consumers are legally protected.

In the course of the consumer protection movement, there are two kinds of adage, namely *caveat emptor* (consumer beware) which then becomes *caveat vendor* (producer beware). These two caveats are closely related to the business strategy of business actors.

During the strategic period of business, business actors were primarily oriented towards their ability to produce products (production oriented / product-out policy), then during that time consumers had to be vigilant in consuming goods and services offered by business actors. At this time consumers do not have many opportunities to choose goods and services to consume according to their tastes, purchasing power and needs. Consumers are "dictated" by producers. Along with the development of science and technology as well as the increase and distribution of opportunities for education in the consumer society, there is an increase in critical power in choosing goods or services to meet their needs. Therefore, business actors no longer stick to their old business strategy with the risk that the goods and services offered do not sell in the market but change their business strategy towards meeting the needs of market appetites and purchasing power (market oriented / market-in policy) (Hartono, 1995). At this time, it is the producers who have to *caveat* in fulfilling the needs for goods and / or services from consumers.

So that consumer protection from before the incident is important. Both from supervision and caution over incoming data. Until if it has happened, the existing evidence has supported how the enforcement process can run properly so that consumers are not harmed by persons who do not have good faith. Either by affirming sanctions by law either by warning agencies or individuals who aid in the occurrence of adverse events from insurance events.

## 4 CONCLUSIONS

Policy arrangements in the name change according to the insurance policy have been regulated in the policy, in the form of an endorsement or change. This is to show the identity and files of changes which also see the goodwill of the insured or the insurer as well as the people associated with the policy with caution. The procedure for changing the name of a policyholder is based on insurance, namely fulfilling the requirements in the standard classification set by

the policy or with the provisions of the company. Where it meets applicable laws and regulations as well as good faith and caution so that it does not cause problems or disputes in the future. And also not forgetting the principle of notification in accordance with article 251 of the Commercial Code.

The submission will change the position of the insurance beneficiary. Legal protection in the insurance agreement in terms of a name change that will occur with the contents of the insurance policy and the provisions of the applicable laws. And if there is an action that is detrimental to the parties, it is through Mediation media, namely the Indonesian Insurance Mediation Agency (BMAI), and if an agreement cannot be made through the media, it can be submitted to the District Court where the Policy Holder or Branch Office is located. If there is bad intention and falsification, the agreement can be canceled and the person who did this can be punished in accordance with the provisions of Article 78 of Law Number 40 of 2019.

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