LEGAL SPIRIT

E-ISSN : 1978-2608 Volume 10, (1), 2026

The Legal Review Towards Default Arise in Insurance Contract: Case Study of Dispute Between Astra Buana Medan Branch Company and The Insured

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ABSTRACT

This article aims to analyze the default in the insurance agreement and to describe the legal considerations in the Supreme Court Decision Number 1137 K/Pdt/2020. Insurance as a contract cannot be separated from the negligence of one of the parties, namely the failure to fulfill its obligations. Such as insurance PT Astra Buana Medan Branch cannot carry out its obligations due to losses experienced by customers due to ownership of goods and default. The result of this case shows that the case was submitted to the Court based on Supreme Court Decision Number 1137 K / Pdt / 2020. This research itself uses Doctrinal legal research whose data is obtained by analyzing Supreme Court Decision Number 1137 K/Pdt/2020 and the Promissory Note Insurance Law. Based on examination and consideration, default is an act of breach of contract as referred to in Article 1238 of the Civil Code if the specified period has passed to fulfill an obligation, namely negligence. This happens, for example, in insurance contracts. Like PT, insurance companies often do not keep their promises. Astra Buana Medan Branch binds customers to purchase vehicle units using the unit purchase service, but PT. Because Astra Buana Medan branch did not keep its promise to submit insurance claims to its customers, the case was brought to court and indeed as confirmed in the Supreme Court Decision PT to fail to pay customer insurance claims.

Keywords	*Contract; Default; Insurance*
Cite This Paper	Nadhol, M. (2026). The Legal Review Towards Default Arise in Insurance Contract: Case Study of Dispute Between Astra Buana Medan Branch Company and The Insured. *Legal Spirit, 10*(1).
Manuscript History: *Received:* July 15, 2024 *Accepted:* April 10, 2026 *Corresponding Author:* Muhammad Nadhol, muhammad.nadhol@gmail.com	Legal Spirit is *Licensed under a Creative Commons Attribution-ShareAlike 4.0 International License* **Indexed:** **Layout Version:** V8.2024

PRELIMINARY

Transportation is a very important tool for people's lives. In line with this, transportation also experienced a very rapid development in accordance with the progress of society. With public transportation it becomes easier and faster to get to the desired place.[1] Transportation transportation is also very helpful for companies in terms of delivering goods to the insured. The company also requires that the goods arrive at the specified destination. Advances in the field of transportation have a major influence on society and increasingly spur companies to produce more sophisticated products. produce increasingly sophisticated products. A company that selling four-wheeled vehicles, namely

[1] Ramlah Ramlah (2022). Penerapan Ganti Rugi Asuransi Mobil Pada Kasus Kecelakaan dan Pencurian PT. Asuransi Tri Pakarta. *OPTIMAL Jurnal Ekonomi dan Manajemen*, 2(2), 223-232.

cars, especially there are a company that has been favored, because the service is very good and connect some buyer directly to the insurance for the purpose of guarantee.

The legal basis for car insurance contracts is Article 1774 of the Civil Code (hereinafter referred to as the "Civil Code") which states that a contract is a legal relationship regarding property between two people, and one party is given the right to receive insurance money from one person demanding something from another person. while the other person is obliged to fulfill the request.[2] "A win-win agreement is an action in which the outcome, either profit or loss for all parties and some parties, depends on an uncertain event. In the context of modern mobility, motor vehicle ownership has become an integral part of everyday life. However, the risks associated with vehicle use such as traffic accidents, theft, and damage, create the need for financial protection.[3]

Vehicle insurance comes as a solution that allows vehicle owners to protect their investment and mitigate financial risks that may arise due to unforeseen events. In recent years, the vehicle insurance market has grown rapidly, with various types of policies and options offered by insurance companies.[4] Insurance is an agreement in which the insurer promises to the assured to receive a sum of premium money as a substitute for losses that may be given by the assured, due to an event that is not yet clear.

The car insurance contract between the insured and the insurance company certainly creates obligations for both parties to provide these services. The fundamental obligation of the insured is to pay a premium with the aim of transferring the risk of property based on the contract, which in essence is the main right of the insured and vice versa the insurance company in the event of an accident. This creates a desire to provide protection through a contract which is the main right of the insurance company. This means that there is a relationship between the obligations of the insured and the obligations and rights of both parties to the insurer.[5]

All legal relationships in social life, whether large or small, cannot avoid conflict. This also applies to car insurance contracts between policyholders and insurance companies. When the car insurance contract is not implemented as it should, it is proven that one of the parties has made a default or did not fulfill its promise. If there is a default, the victim will submit a claim to the perpetrator to ask for compensation and compensation for the default.[6]

One of the case of default in car insurance arises between the Medan Branch of PT Astra Buana Insurance and the insured Like the Medan Branch of PT Astra Buana Insurance, which makes default because PT Astra Buana Medan Branch which binds its customers because of the purchase of vehicle units by using its services to purchase the unit, but PT Astra Buana Medan Branch does not keep its promise to make insurance claims for its customers, so that this problem reaches the Court which in fact PT Astra Buana Medan Branch continues to default on its customers' insurance claims as stated in Article 1238 of the Civil Code.s obligations due to losses experienced by its customers on the ownership of an item. So that this problem reached the court with the Supreme Court Decision Number 1137 K / Pdt / 2020. This problem implies being brought to the court with the Supreme Court Decision Number 1137 K / Pdt / 2020. Therefore, the goals of this article are to analyze the default in

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[2] R. Subekti. (2016). *Hukum Perjanjian*, Jakarta: Intermasa. Hlm.79.
[3] Herman Joseph. (2022). Akibat Hukum Wanprestasi Terhadapakta Kesepakatan Bersama Yang Dibuat di Hadapan Notaris (Studi Kasus Putusan Pengadilan Negeri Bekasi Nomor 339/Pdt. G/2019/PN. BKS). *Jurnal Hukum Adigama*, 5(1), 936-955.
[4] Ni Putu M.D Winanda & Anak Agung Ngurah Wirasila. (2019). Tanggung Jawab Pt Asuransi Astra Buana dalam Asuransi Mobil. Kertha Semaya: Journal Ilmu Hukum, 7(8), 1-10
[5] Fredi A, Fadilah dan Endang Heriyani. (2020). "Perjanjian Sewa Menyewa Mobil yang Menimbulkan Wanprestasi di Kabupaten Bantul*". Media Law and Sharia.* 1 (2), 106-118
[6] Annisa A. Nasution, et.al. (2023). Tinjauan Perlindungan Hukum Bagi Pihak Tertanggung dalam Kasus Wanprestasi oleh Pihak Penanggung Asuransi. *Inspiring Law Journal*, 1(1), 34-40.

the insurance agreement and to describe the legal considerations in the Supreme Court Decision Number 1137 K/Pdt/2020.

METHOD

The research uses a type of doctrinal legal research, namely research that uses library materials or secondary data consisting of primary legal materials, secondary legal materials and legal materials.[7] The data source used is Supreme Court Decision Number 1137 K/Pdt/2020, while the type of data is secondary data obtained by collecting and reviewing literature or documents related to this writing where the data consists of binding legal materials consisting of basic norms or methods.[8]

Primary legal materials used in this research are: Civil Code, Law Number 40 of 2014 concerning Insurance, and Supreme Court Decision Number 1137 K/Pdt/2020. Secondary legal materials in this study are legal materials that provide guidance and explanations for primary legal materials, secondary legal materials used are books, research results, seminars, scientific findings, other provisions that are directly related to the object of research. Finally, the analysis of legal materials used in writing this paper is to use qualitative data analysis methods, namely research that refers to legal norms contained in laws and court decisions as well as legal norms that live in society.[9]

RESULT AND DISCUSSION

The Implication of default in Insurance Agreement

Insurance is a contract between legal entities that enter into a loan agreement to guarantee something if there is an insured and a guarantor in the loan contract. As a guarantee for both parties, the insured is given insurance with the obligation to pay a premium determined by the insurance company. Within this period, the insurance company will be responsible for damage to the insured item based on mutual agreement. Insurance that was first recognized in Indonesia was a general insurance product.[10]

The establishment of insurance was brought by the Dutch who came to Indonesia during the colonial period.[11] The definition of insurance itself can be seen in Article 246 of the KUHD, namely insurance or coverage is an agreement in which an insurer by enjoying a premium bind himself to the insured to free him from losses due to loss, damage or absence of expected profits, which he will suffer due to uncertain events. So, it can be interpreted that the existence of insurance is inseparable from the relationship between two legal subjects as the insurer and the insured as a form of bonding of the rights and obligations of both.

In addition to Article 246 of the KUHD, the definition of insurance can also be seen in Article 1 number 1 of Law of the Republic of Indonesia Number 40 of 2014 concerning insurance, namely "Insurance is an agreement between two parties, namely an insurance company and a policy holder, which is the basis for the receipt of premiums by insurance companies in return for:

a Provide compensation to the insured or policyholder for loss, damage, costs incurred, loss of profit, or legal liability to third parties that the insured or policyholder may suffer due to the occurrence of an uncertain event;

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[7] Budi Juliardi, et.al. Metode Penelitian Hukum. (Padang: CV. Gita Lentera, 2023) Hlm. 43

[8] Nurul Qamar dan Farah Syah Rezah. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Jakarta: CV. Social Politic Genius (SIGn). Hlm. 38

[9] Dyah Ochtorina Susanti dan A'an Efendi. (2022*). Penelitian Hukum: Legal Research.* Jakarta: PT. Bumi Aksara. Hlm. 54

[10] Junaedy Ganie. (2011). *Hukum asuransi Indonesia*. Jakarta: Sinar Grafika. hlm. 68

[11] Della M. Muchlis (2023). Sejarah Perkembangan Asuransi Syariah Serta Perbedaannya Dengan Asuransi Konvensional di Indonesia. *SINOMIKA Journal: Publikasi Ilmiah Bidang Ekonomi dan Akuntansi*, 1(6), 1489-1498.

b Provide payments based on the death of the insured or payments based on the life of the insured with benefits that have been determined and / or based on the results of fund management."

The explanation in the article above about the ins and outs and the importance of insurance in daily needs, regarding the relationship that exists between two people in the sense of an agreement. In this insurance contract, there are rights and obligations between the parties as payers and payees. In the article above, it is divided into two types, namely property and death of the person who is the guarantee of responsibility.

Default is the failure to fulfill obligations that have been stipulated in the agreement, due to the fault of the debtor, cither intentionally not fulfilling obligations, negligence, adn force majeur. Article 1238 of the Civil Code, reads: "The debtor is negligent, if he is declared negligent by warrant or by a similar deed, or by his own agreement, if this stipulates that the debtor must be considered negligent with the passage of time specified." The legal consequences for debtors who have defaulted are legal penalties or sanctions, namely:[12]

a The debtor is obliged to pay compensation that has been suffered by the creditor (Article 1243 of the Civil Code);
b If the obligation is reciprocal, the creditor can demand termination or cancellation of the obligation through a judge (Article 1266 of the Civil Code);
c If the obligation is to give something, then the risk passes to the debtor since the default occurs (Article 1237 paragraph (2) of the Civil Code);
d The debtor is obliged to fulfill the obligation if it can still be done, or cancellation is accompanied by payment of compensation (Article 1267 of the Civil Code);
e The debtor must pay court costs, if allowed by the Court, and the debtor is found guilty

Each object of insurance itself has a period and the validity of the insurance as well as in the case of insurance of tangible objects such as vehicles. This car insurance itself is insurance provided by insurance companies to make it easier for the insured to repair their car within a certain period of time.[13] Car insurance included as the insurance product that covers the risk of your car being damaged or lost. The types of vehicles covered include cars, motorcycles, trucks, and buses. In insurance practice, motorized goods/vehicles are treated by the insurance company in the form of repair or replacement for damage or loss suffered by the insured. Of course, the insured can claim this by obtaining rights based on the police salary agreed by the parties. For car insurance, there are two ways: registering the insured directly, and specifying the car company/seller when purchasing the vehicle itself.[14]

Legal considerations in the Supreme Court Decision Number 1137 K/Pdt/2020.

Insurance default cases that are often brought to court are defaults in not performing the performance of certain parties. Before proceeding with a lawsuit, the court will generally make legal efforts before heading to the court table, namely by means of mediation.[15] In the case of default, this is often rarely heard by the general public. Default is the debtor's negligence in fulfilling the agreement, also means that the performance or

[12] Satrio, J. (2012) *Wanprestasi Menurut KUHPerdata, Doktrin dan Yurisprudensi*. Bandung: Citra Aditya Bakti. hlm. 15

[13] Antonius A. Lie. (2022). The social capital in business organizations: A case study of PT Asia Motor vehicle insurance claim polysindo crime in Jakarta. *International Journal for Educational and Vocational Studies,* 4(1), 58-63.

[14] Zainuddin Ali. (2023). *Hukum Asuransi Syariah*. Jakarta: Sinar Grafika. Hlm.36

[15] Herselin Selin, et.al. (2024). Aspek Hukum Wanprestasi Terhadap Perjanjian Kemitraan Pengelolaan Lahan di Desa Kinatang Kabupaten Mamaju. *Jurnal Hukum Unsulbar*, 7(1), 32-44.

obligation in an agreement is not fulfilled. Default occurs due to error, negligence, and intent.[16]

In general, the occurrence of default begins with a contractual relationship. Contracts are made as instruments that specifically regulate the legal relationship between private and civil interests, especially in contract making. Even though this case is quite frequent, there are many elements that can be explored, and can be a lesson for the general public to then be able to know the steps and elements of default in an insurance agreement.[17]

Default in a motor vehicle insurance agreement as in the decision of the Supreme Court of the Republic of Indonesia Number: 1137 K/Pdt/2020, namely the insurer has defaulted on its obligation to grant and approve the application for an insurance claim from the insured on the basis of a financing agreement dated October 31, 2013 made and signed by the Insured and the Insurer for 1 (one) unit of vehicle (car) toyota avanza silver metallic with frame number MHKM1BA3JDJ038797 Engine number K3MC59513 police number 1275 ZG as a result of an accident that occurred on the highway so that the Insurer's Supreme Court paid material losses as a result of having to incur its own costs to repair the damage experienced by the insured car which amounted to Rp. 35. 35 000,000.00 (thirty million rupiah) and imaterill loss due to the time and work of the insured which is disrupted due to taking care of the damage to the insured car which is estimated at Rp.70,000,000.00 (seventy million rupiah). Motor Vehicle Insurance Agreement with Policy Number 1311381464 on behalf of PT Toyota Astra Financial services and Zubaril Ahmad Nasution, S.Pdi with a 2013 Toyota avanza car with frame number MHKM1BA3JDJ038797 Engine number K3MC59513 Police number 1275 ZG on the basis of a financing agreement dated October 31, 2013 is valid and binding.

Case Number: 1137 K/Pdt/2020 at the Supreme Court is a cassation appeal against the Medan District Court Decision Number: 573/Pdt.G/2016/PN.Mdn Jo. Decision of the Medan High Court Number: 431/Pdt/2017/PT.Mdn, regarding ordinary civil cases. That as for the beginning of this dispute due to the existence of negligence between the parties regarding the agreed engagement. The parties in this case are Zubari Ahmad Nasution (Plaintiff) against PT Asuransi Astra Buana Medan Branch (Defendant I), M. Bangun Pambudi (Defendant II), and Christian Tinovel Manurung (Defendant IID.

The Plaintiff himself is one of the customers of Defendant I, namely in accordance with Policy Number: 1311381464 in the name of PT Toyota Astra Financial Service qq Zubaril Ahmad Nasution, S.Pdi. and on the basis of the Financing Agreement dated October 31, 2013 made and signed by the Plaintiff and Defendant HI for the purchase of 1 (One) unit of Toyota Avanza vehicle. The Plaintiff used the Avanza car on a daily basis to assist him in carrying out his daily work. However, around 2016 the Plaintiff suffered a traffic accident which caused damage to the Avanza vehicle that he purchased on credit.

Therefore, based on this damage, the Plaintiff submitted an insurance claim to Defendant I in accordance with the Financing Agreement dated October 31, 2013. This insurance sentence is also based on the existence of a Policy Number: 1311381464 issued by PT Toyota Astra Financial Service qq Zubaril Ahmad Nasution, S.Pdi. Therefore, it is appropriate and reasonable for the Plaintiff to obtain repairs through insurance from Defendant I. That the Defendant I has no desire to fulfill the insurance claim submitted by the Plaintiff. Therefore, the Plaintiff has submitted a warning (subpoena) through his legal counsel to Defendant I to immediately fulfill the insurance claim for his vehicle.

The actions of Defendant I, Defendant II, and Defendant II, who refused to carry out their obligations to grant and/or approve the insurance claim application requested by the Plaintiff, and Defendant I through Defendant IT was only willing to provide 50% of the insurance value to the Plaintiff, were juridically classified as acts of breach of promise (wan

[16] Moody R. Syailendra, et.al. (2023). "Wanprestasi Dalam Perjanjian Asuransi (Studi Putusan PN Jakarta Selatan Nomor 482/PDT.G/2020/PN. JKT. SEL)". *Jurnal Ilmiah Wahana Pendidikan*, 9 (19), 540-547
[17] Nurhadi A. Juang, et.al. (2022). Problematika Wanprestasi Atas Perjanjian Arisan Online. *Jurnal Ilmiah Dunia Hukum*, 7(1), 48-59.

prestatic), because they were contrary to the provisions contained in the Financing Agreement Number: 93904513. Therefore, in order to obtain justice, the Plaintiff through his attorney registered this case with the Medan District Court.

After receiving the decision of the Medan High Court, Defendant I has also filed a cassation appeal on the grounds that there was an incorrect application of law in the decisions of the Medan District Court and Medan High Court. For this reason, Defendant I believes that through this cassation appeal it will obtain justice. So that this case was registered at the Registrar of the Supreme Court with Number: 1137 K/Pdt/2020. Where the case file has been re-examined for the presence or absence of Judex Factie errors in applying the applicable law.

CLOSING

The regulation of the insurance agreement itself is contained in the Insurance Law, which has obtained a business license from the Ministry of Finance and is supervised by the Financial Services Authority (OJK), while the regulation of default is still regulated based on the Third Book of the Civil Code regarding ties. 2. The insurance process at PT Astra Buana Medan Branch, greatly affects customers in terms of dependence on the guarantee of the vehicle they bought. Where PT Astra Buana Medan Branch requires that every vehicle purchased by its customers will be provided with insurance in accordance with company regulations, by providing services in the form of liability for damage, with the payment of premiums made by the customer to PT Astra Buana Medan Branch as the insurer.

Against the judge's decision, it is in accordance with the laws and regulations, by examining in advance what is the ojek of the problem submitted by the customer. This is the basis of the examination to prove the existence of acts that violate promises or neglect of customers as consumers at PT Astra Buana Medan Branch. Of course this greatly affects the flow of the case, and in fact it is legally proven that PT Astra Buana Medan Branch made a default by not carrying out its obligations as in the agreed insurance agreement.

Suggestion

a. This insurance agreement should be carried out based on the Insurance Law, and resolved in a family manner. Therefore, a special regulation is needed regarding the settlement of this insurance dispute, considering that this can be equated with consumer disputes. Therefore, the Insurance Law should have stipulated the settlement and punishment of each party that does not carry out its obligations without a court decision.
b. PT. Astra Buana Medan Branch should have to do details regarding its responsibility for replacing damage to the insurance object in advance in order to facilitate claims and settlements between customers and PT Astra Buana Medan Branch.
c. Against the verdict, the Panel of Judges should have sentenced PT Astra Buana Medan Branch to pay material losses to its customers, considering that the consequences of its actions have caused the customers to suffer losses with the late settlement of PT Astra Buana Medan Branch.

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