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PANCASILA PRINCIPLE OF JUSTICE IN THE REGULATION OF (CONVENTIONAL) INSURANCE STANDARD CONTRACT IN INDONESIA

Andri Christian
Universitas Pelita Harapan, Indonesia,
andri.cls001@gmail.com

Abstract

The purpose of this research is to analyze the ideal regulation provide protection for the insured in the statutory provisions related to Indonesia's conventional insurance standard contract in order to realize the Pancasila principle of justice. This research uses normative legal research methods, the application of which is rational theoretical, so the disclosure is tied to methods based on deductive logic requirements. The ideal regulations that can provide protection for the insured, carried out through the formation of regulations and implementing regulations, they are formed in stages and based on other norms in the series of legal systems. The objectives of the establishment include external and internal legal protection, as well as creating certain equality and restrictions to protect those with weaker bargaining positions. The regulations formed are applied simultaneously with supervisory measures, concrete sanctions, the content of regulations is formed from within the law and has an impact on society, and the values contained in the regulations are intrinsic Pancasila, which then the regulations are consistently obeyed by all parties. The intrinsic values of Pancasila are realized through the application of the Pancasila principle of justice in the regulation of conventional insurance standard contract in Indonesia by applying the Pancasila triangle of justice interrelation.

Keywords: *Pancasila Principle of Justice; Insurance Standard Contract*

1. INTRODUCTION

Indonesia was expected and aspired by the founding fathers as a state of law (*Rechtsstaat* or The Rule of Law),[1] as affirmed by Article 1 paragraph (3) of the 1945 Constitution of the Republic Indonesia ("the Constitution"), which states "The State of Indonesia is a state of law". The understanding and practice of "state based on law" in Indonesia tends to be commensurate with the doctrine of "Rule of Law". According to Satjipto Rahardjo, such understanding and practice show a way of doing that is not independent, because as an independent nation it is time for Indonesia to act and think independently, including in practicing the institution called "state based on law".[2] The Indonesian people must dare to raise "Pancasila" as a refreshing alternative in building the Indonesian version of the "state based on law".[3]

According to Mochtar Kusumaatmadja, the function of law in society has the same meaning as the understanding of the purpose of law. The purpose of law, when reduced to one thing, can be interpreted as order. Order is the first and foremost goal of all laws. The need for order is a fundamental condition for an orderly society. Another goal of law is the achievement of justice that varies, both in content and size, according to society and its

[1] Jimmly Asshiddiqie, *Menuju Negara Hukum yang Demokratis* (Jakarta: Gramedia, 2009), 3.
[2] Satjipto Rahardjo, *Sisi-sisi Lain dari Hukum di Indonesia* (Jakarta: Buku Kompas, 2009), 3–4.
[3] Rahardjo, *Sisi-sisi Lain,* 3–4.

era.[4] John Rawls opined that understanding the conception of justice must be done by clarifying the conception of social cooperation that produces it. But in the implementation, it must not neglect the special role of the principle of justice on the main subject, which is the basic structure of society.[5]

A standard contract is also qualified as a contract. Standard contract in Dutch is translated as "*Standard Voorwarden*". There is no uniformity regarding the terms of the standard contract. German literature uses the term "*Allgemeine Geschafts Bedigun*" or "*Standaard-vertrag contract*". English law calls it a "Standard Contract"[6]. While standard contract in the United States generally use the term contract of adhesion, which is defined as: "A contract of adhesion is a standardized contract, prepared by the party of superior bargaining strength, and relegates to the subscribing party only the opportunity to adhere to the contract or reject it".[7] The use of the term "contract of adhesion" in the United States became known in United States legal system after Harvard Law Review published an article on life insurance contract written by Edwin W. Patterson in 1919,[8] in which he referred to the contract as a standard contract, which excluded or negated negotiations in determining the content of the contract and referred to it as 'take it or leave it' contract. Furthermore, the term was popularized by Kessler through his writing entitled "Contracts of Adhesion-Some Thoughts about Freedom of Contract, Role of Compulsion in Economic Transactions".[9] In later date, according to Mo Zhang, the concept of contract of adhesion itself does not originate from the United States, but comes from French civil law, which was adopted by an American court in 1962.[10] In Indonesia, Mariam Darus Badrulzaman translated it as "Standard Contract". Standard means benchmark, size, reference. If the legal language is standardized, it means that legal language is determined by its size, benchmark, standard, therefore it has a fixed meaning, which can be a common term.[11] The standard contract is motivated by socio-economic conditions. Where large companies make cooperation for their interests, which are created and determined unilaterally. By using standard contract, entrepreneurs will gain efficiency.[12]

[4] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (Bandung: PT Alumni, 2006), 3.
[5] John Rawls, *Teori Keadilan: Dasar-Dasar Filsafat Politik untuk Mewujudkan Kesejahteraan Sosial dan Negara (A Theory of Justice)*, trans. Uzair Fauzan and Heru Prasetyo (Yogyakarta: Pustaka Pelajar, 2006), 11.
[6] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis* (Bandung: PT Alumni, 2005), 46.
[7] Katherine E. Freije, *Corpus Juris Secundum, A Contemporary Statement of American Law as Derived from Reported Cases and Legislation Vol. 17* (Danvers: Thomson Reuters, 2020), 451.
[8] J.W. Looney and Anita K. Poole, "Adhesion Contracts, Bad Faith, and Economically Faulty Contracts," *Drake Journal of Agricultural Law* 4 (1999): 177–194, https://nationalaglawcenter.org/publication/download/looney-poole-adhesion-contracts-bad-faith-and-economically-faulty-contracts-4-drake-j-agricultural-l-177-195-1996/.
[9] Friedrich Kessler, "Contract of Adhesion—Some Thought about Freedom of Contract, Role of Compulsion in Economic Transactions," *Columbia Law Review* 43 (1943): 629–642, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=11639&context=journal_articles.
[10] Mo Zhang, "Contractual Choice of Law in Contracts of Adhesion and Party Autonomy," *Akron Law Review* 41, no. 1 (2008): 123–173, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017841.
[11] Badrulzaman, *Aneka Hukum Bisnis*, 46.
[12] Badrulzaman, *Aneka Hukum Bisnis*, 46.

According to Holdsworth,[13] insurance has been defined as a contract, in which one party (insurer), by receiving a premium in return, promises to compensate the other party (insured) who suffered a loss. Robert E. Keeton suggests that insurance is a contract or management of the transfer and distribution of risk, where one party is called an insurance company (insurer) promises to do something of value for the other party called the insured and/or beneficiary, when an uncertain event occurs (object of coverage).[14] The relationship between the insurer and the insured binds itself in a standard insurance contract called a policy, the standard insurance contract is included in the contract law system in Indonesia and refers to the principles applicable in national contract law. However, in its implementation, the insurer uses a standard contract.[15] According to Susan Randall, the urgency of standardizing insurance policies, in addition to reducing costs is also very important for actuarial data collection. Another case from the insured's point of view, insurance policy standardization is considered as a form of control from the insurer over the contents of the policy, which is carried out without negotiation in determining the contents and requirements of the policy.[16] Therefore, an insurance policy is classified as an adhesion contract,[17] because it is made and prepared in a standard form (which has been standardized) by the insurer, then offered on a 'take-it-or-leave-it' basis to the prospective insured at a disadvantage in terms of bargaining power.[18] Insurance policies can be said to be a "super-adhesion" contract, because in some lines of insurance, all insurance companies provide identical coverage on the same 'take-it-or-leave-it' basis.[19] The only choice the insured has left and seems to be 'freely made', namely the choice to buy insurance or not.[20]

One form of implementation of Article 1 paragraph (3) of the Constitution can be done through the establishment of laws and regulations that can provide legal certainty and create justice for the people of Indonesia, which covers all aspects of activities in the

[13] W. Holdsworth, "The Early History of The Contract of Insurance," *Columbia Law Review* 17, no. 2 (February 1917) in Ray Hodgin, *Insurance Law* (London: Cavendish Publishing Limited, 1998), 21.
[14] Robert E. Keeton, *Basic Text on Insurance Law* (St. Paul, Minn: West Publishing Co., 1971), 2–3.
[15] Mariam Darus Badrulzaman, *Asas Kebebasan Berkontrak dan Kaitannya dengan Perjanjian Baku (Standar)*, (Makalah dalam Seminar Sehari dalam rangka Pra Kongres Ikatan Notaris, Surabaya, 27 April 1993) in Mariam Darus Badrulzaman, *Aneka Hukum Bisnis* (Bandung: PT Alumni, 2005), 46.
[16] Susan Randall, "Freedom of Contract in Insurance," *Connecticut Insurance Law Journal* 25 (2007): 124, https://digitalcommons.lib.uconn.edu/cilj/25/.
[17] In fact, insurance policies were the first type of contract to which the term "adhesion contract" was applied. See E. Allen Farnsworth, Contracts, 2nd ed. (London: Little Brown & Co Law & Business, 1990). For general discussions of adhesion contracts, see Friedrich Kessler, "Contract of Adhesion—Some Thought about Freedom of Contract, Role of Compulsion in Economic Transactions," *Columbia Law Review* 43 (1943); Todd D. Rakoff, "Contracts of Adhesion: An Essay in Reconstruction," *Harvard Law Review* 96, no. 6 (April 1983): 1173–1284, https://www.jstor.org/stable/1341009. For a specific discussion of the concept in the context of insurance, see James M. Fischer, "Why Are Insurance Contracts Subject to Special Rules of Interpretation? Text versus Context," *Arizona State Law Journal* 24 (1992) in Randall, "Freedom of Contract."
[18] Randall, "Freedom of Contract."
[19] Kenneth S. Abraham, "A Theory of Insurance Policy Interpretation," *Michigan Law Review* 95, no. 3 (1996): 534 in Randall, "Freedom of Contract,", 25.
[20] But see Todd D. Rakoff, "Contracts of Adhesion: An Essay in Reconstruction," *Harvard Law Review* 96, no. 6 (April 1983): 1173–1284, https://www.jstor.org/stable/1341009 in Randall, "Freedom of Contract."
An influential study which does not include this aspect in its seven-factor definition of adhesion contract. Rakoff recognizes that lack of consumer understanding is a "normal concomitant" of the use of form contracts but argues that it is not an essential feature.

community including activities in the insurance industry. Insurance is a legal term used both in laws and regulations and in insurance business activities.[21] The definition of "insurance" always includes two types of business activities, namely insurance business and insurance supporting business.[22] In its development in Indonesia, in accordance with Article 1 point 4 of Law No. 40/2014 on Insurance ("Insurance Law"), the scope of insurance business includes all businesses related to insurance services or risk management, risk re-coverage, marketing and distribution of insurance products or sharia insurance products, insurance consulting and intermediary, sharia insurance, reinsurance, or sharia reinsurance or sharia insurance loss assessment. Sharia insurance business is different from conventional insurance which includes general insurance and life insurance businesses, which apply the concept of risk transfer, meanwhile sharia insurance business applies the concept of risk sharing. The Insurance Law does not provide a specific definition for conventional insurance business groups, the term 'conventional' appeared in a public hearing on the discussion of the insurance bill on January 9, 2013 in the House of Representatives of the Republic of Indonesia ("DPR").[23] The term 'conventional' is only used to distinguish types of sharia insurance from other insurance such as general insurance and losses in discussion meetings, therefore it is logical that when the bill is passed into law, the term 'conventional' is not given a specific definition in Article 1 of the general provisions of the law, but is only used in the explanatory part of Article 3 of the Insurance Law.

From various laws and regulations which are directly related to insurance standard contract in an effort to ensure the continuity of economic growth in Indonesia, especially in the insurance sector, have not been able to provide adequate legal protection. These laws and regulations include: Indonesia Civil Code (“Civil Code”); Indonesia Commercial Code (“Commercial Code”); Insurance Law; Law No. 8 of 1999 on Consumer Protection ("Consumer Protection Law"); Regulation of the Financial Services Authority of the Republic of Indonesia ("POJK") No. 6/POJK.07/2022 on Consumer and Public Protection in the Financial Services Sector ("POJK No. 6-07-2022"); POJK No. 38/POJK.05/2020 on Amendments to POJK No. 69/POJK.05/2016 on Business Operation of Insurance Companies, Sharia Insurance Companies, Reinsurance Companies, and Sharia Reinsurance Companies ("POJK No. 38-05-2020"); and POJK No. 23/POJK.05/2015 concerning Insurance Products and Marketing of Insurance Products ("POJK No. 23-05-2015"). Laws and regulations related to conventional insurance standard contract only regulate provisions regarding the inclusion of standard clauses in standard contract, but have not specifically and comprehensively regulated standard contract or conventional insurance standard contract. For example: Article 18 paragraph (1) letter (g), paragraph (2), paragraph (3), and paragraph (4) of the Consumer Protection Law, the regulation is limited to the use of standard clauses, and in addition Article 30 paragraph (1) of POJK No. 6-07-2022, regulates

[21] Abdulkadir Muhammad, *Hukum Asuransi Indonesia* (Bandung: PT Citra Aditya Bakti, 2006), 5.
[22] *Muhammad, Hukum Asuransi Indonesia*, 6.
[23] Dewan Perwakilan Rakyat Republik Indonesia, “Risalah Rapat Komisi XI DPR RI, Rapat Dengar Pendapat Umum tentang Pembahasan RUU Perasuransian, tanggal 9 Januari 2013,” https://berkas.dpr.go.id/akd/dokumen/K11_laporan_Lapasing_RDPU.pdf.

the use of standard contract, but does not provide definitions of standard contract in the general provisions of regulations, but only stated in the explanation of articles. The rest of this regulation regulates the prohibition of using prohibited standard clauses, which in principle the content of the provisions is the same as that regulated by Article 18 of the Consumer Protection Law. Another example, Article 30 paragraph (1) of POJK No. 6-07-2022 stipulates that in the event that financial service actors use a standard contract, the standard contract must be prepared in accordance with laws and regulations. However, in Indonesia there is not a single law that specifically regulates standard contract. Therefore, theoretically and substantively, POJK No. 6-07-2022 cannot be qualified as a law governing regulating standard contract.

Due to the injustice that occurs because of the application of standard contract, especially for the insured as a weaker party, the Financial Services Authority of the Republic of Indonesia (*Otoritas Jasa Keuangan*/"OJK") as an institution that has the authority to regulate and supervise insurance business in Indonesia or at least the government and Parliament (*Dewan Perwakilan Rakyat*/DPR) as institutions that have the authority to form laws should have the initiative to form laws that specifically regulate standard contract that includes conventional insurance standard contract, and it is hoped that these laws and regulations can protect the insured from the implementation of conventional insurance standard contract. The state in this case has the obligation to protect the insured from the application of conventional insurance standard contract with more concrete efforts, through the establishment of fair laws and regulations and can optimally supervise the implementation of conventional insurance standard contract. For example, the weak practice of supervision of the implementation of conventional insurance standard contract, where insurance companies often include exoneration clauses, such as:[24] i) provisions for changes in the allocation of investment funds: the level of offer and offer for such changes is determined by the company; and ii) the risks arising from the choice of investment shall be borne entirely by the policyholder, both for the unit price and the return on investment per unit. In addition, the extent to which OJK can supervise the implementation of insurance standard contract whose format and substance of contract fully adopts insurance standard contract applied in other countries, other than Indonesia. In addition to not being able to provide legal protection for the insured in the implementation of conventional insurance standard contract, in Indonesia there is no law at all at the level of legislation, there are even more concerning things, with the issuance of the Circular Letter of the Financial Services Authority of the Republic of Indonesia ("SEOJK") No. 13/SEOJK.07/2014 on Standard Contract ("SEOJK No. 13-07-2014"), where the content of the circular letter are regulatory and regulate more than the rule as the basis for making the circular letter, namely POJK No. 1/POJK.07/2013 on Consumer Protection in the Financial Services Sector, even though these provisions have been changed to POJK No. 6-07-2022, but SEOJK No. 13-07-2014 which is the implementing regulation of POJK No. 1/POJK.07/2013 is still declared valid according to Article 60 POJK No. 6-07-2022.

[24] Johannes Gunawan & Bernadette M. Waluyo, *Perjanjian Baku, Masalah dan Solusi* (Jakarta: GIZ/PROTECT, 2021), 93.

The validity of the standard contract is also an issue that raises expert debate, as is the case in the Netherlands and the United States. The debate among Dutch legal scholars over the validity of a standard treaty ended with the publication of a special article on the standard terms of a treaty in the *Nieuw Nederlands Burgelijk Wetboek* entered into force on 1 January 1992.[25] In the United States, it initially ignored the fact that standard contract was made by parties who were unequal in knowledge and position, because they adhered to the doctrine of *caveat emptor*,[26] but since the 1960s, this view has been abandoned. The courts began to monitor the abuse of contract by more powerful parties in connection with the application of standard contract by applying the doctrine of unconscionability. This doctrine became the basis for setting standard contract in the United States, as stipulated in the Uniform Commercial Code ("UCC") of 1978,[27] which was applied in 49 of the 50 states in the United States, except the state of Louisiana, which did not adhere to the doctrine of unconscionability[28]. Louisiana does not subscribe to this doctrine because it has applied four examining factors in analyzing standard contract, the arrangement of which was determined by the ruling of Aguillard v. Auction Management Corp.[29] Differences in views as occurred in the Netherlands and the United States led to the establishment of laws and regulations governing standard contract and creation of new doctrines that provided the basis for standard treaty arrangements.

In Indonesia there are also different views from experts on standard contract, Mariam Darus Badrulzaman stated that standard contract is contrary to the principle of responsible freedom of contract,[30] because standard contract is made by one party and it is not in accordance with Article 1320 of the Civil Code, therefore standard contract is considered to have no binding force. Therefore, theoretical juridically, the standard contract does not fulfill the elements required by article 1320 of the Civil Code *jo.* article 1338 paragraph (1) of the Civil Code.[31] In contrary Sutan Remy Sjahdeini,[32] focuses more on setting clauses in the standard contract, by stating: the validity of the standard contract does not need to be questioned, but it is necessary to regulate the basic rules as the rules of the game therefore the provisions in the standard contract, either partially or entirely bind other parties.[33] The difference in views of experts in Indonesia as standard contract was not followed by the formation of laws and regulations on standard contract nor create new doctrines that could

[25] P.P.C. Haanappel and Ejan Mackaay, *Niuew Nederlands Burgerlijk Wetboek* (Deventer Boston: Kluwer Law and Taxation Publishers, 1990), 214–215 in Sutan Remy Sjahdeini, *Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia* (Jakarta: Disertasi Universitas Indonesia, 1993), 69.
[26] Robert N. Corley and Peter Shedd, *Principles of Business Law* (Englewood Cliffs, New Jersey: Prentice Hall, 1989), 1172 in Sjahdeini, *Kebebasan Berkontrak*, 70.
[27] Mariam Darus Badrulzaman, *Aneka Hukum Bisnis*, 55.
[28] Ronald L. Hersbergen, "Unconscionability: The Approach of the Louisiana Civil Code," *Louisiana Law Review* 43 (1983): 1315–1453, https://digitalcommons.law.lsu.edu/lalrev/vol43/iss6/1/.
[29] Arham Mughal, *Arbitration Clauses: The Louisiana Supreme Court's Flawed Decision in Duhon v. Activelaf, LLC. And Why the Doctrine of Unconscionability Should Be Adopted in Louisiana (February 28, 2018)* (SSRN), 1–24.
[30] Mughal, *Arbitration Clauses*, 53–54.
[31] Mughal, *Arbitration Clauses*, 52.
[32] Sjahdeini, *Kebebasan Berkontrak*, 71.
[33] Sjahdeini, *Kebebasan Berkontrak*, 71.

be used as a basis for the formation of laws and regulations on standard contract, as in the Netherlands and the United States. The validity of the standard contract is one of the essential things in efforts to form laws and regulations. In addition to validity, a more in-depth study is also needed regarding philosophical, juridical and sociological aspects, therefore its application can be in line with the intrinsic values of Pancasila and Constitution, with the hope of realizing fair legal certainty in the application of standard insurance contract in Indonesia. Unlike what is happening in Indonesia today, both POJK and other laws and regulations, only focus on setting standard clauses, where standard clauses are only one part of the anatomy of the agreement, which is based on Article 18 of the Consumer Protection Law, which in fact this law was formed as one of the conditions for Indonesia to obtain assistance from the International Monetary Fund ("IMF") to overcome the 1998 monetary crisis as stated in the letter of intent between Indonesia and the IMF on July 29, 1998.[34]

Based on the background of the problems mentioned above, the author is interested in discussing further the ideal regulatory needed by laws and regulations related to insurance standard contract in Indonesia, especially regarding conventional insurance standard contract covering general insurance and life insurance businesses, in order to realize the Pancasila principle of justice in insurance standard contract to provide protection to the insured. The purpose of this research is to analyze the ideal regulation to provide protection for the insured in the statutory provisions related to Indonesia's conventional insurance standard contract in order to realize the Pancasila principle of justice.

Before moving on to research methods and discussions, it should be stated first that there is research related to this research topic, written by Zahry Vandawati Chumaida, entitled "Principle of Justice in Insurance". However, in Chumaida research, she did not discuss how to realize the Pancasila Principle of Justice in conventional insurance standard contract in Indonesia. This discussion is fundamental in distinguishing Zahry Vandawati Chumaida's research from this research.

2. RESEARCH METHODS

This research uses normative legal research methods, the application of which is rational theoretical, so the disclosure is tied to methods based on deductive logic requirements.[35] The source of data of for this research is obtained from secondary data, which includes:[36] i) primary legal materials, such as the Constitution, Civil Code, Commercial Code, Insurance Law, Consumer Protection Law, POJK, and laws and regulations related to conventional insurance standard contract in Indonesia; ii) secondary legal materials in the form of legal materials that provide explanations of primary legal materials, academic manuscripts, minutes of bill discussion meetings and other secondary

[34] Gunawan and Waluyo, *Perjanjian Baku,* 108.
[35] Zainudin Ali*, Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2022), 20.
[36] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT Raja Grafindo Persada, 2004), 14 in Fajar Sugianto, Yuber Lago, and Laurenzia Luna, "State Law, Integral Economic Justice, and Better Regulatory Practices: Promoting Economic Efficiency in Indonesia," *Global Legal Review* 3, no. 2 (October 2023): 92, https://doi.org/10.19166/glr.v3i2.6552.

legal materials; iii) tertiary legal material, which is legal material that provides guidance to primary legal material and secondary legal material.

3. ANALYSIS AND DISCUSSION

3.1. Legal protection of the Insured in Conventional Insurance Standard Contract

3.1.1. The Role of the Government and Financial Services Authorities of the Republic of Indonesia in Providing Legal Protection for the Insured in the Implementation of Conventional Insurance Standard Contract

The government's efforts in carrying out its social justice maintenance duties, in addition to the provisions as stipulated in Book III of the Civil Code and Book I Chapter IX-Chapter X of the Commercial Code and Book II Chapter IX-Chapter X of the Commercial Code, both of which are Dutch colonial legacy regulations, the government has issued several laws and regulations, including: i) provisions regarding the inclusion of standard clauses regulated in 18 paragraph (1) letter (g), paragraph (2), paragraph (3), and paragraph (4) of the Consumer Protection Law. These provisions also apply to conventional insurance standard contract, in this case the insured is defined as a consumer. This provision has not fully regulated standard contract and the emphasis of consumer protection is only limited to prohibiting the inclusion of standard clauses that can harm consumers and supervision is carried out by the Consumer Dispute Settlement Agency (*Badan Penyelesaian Sengketa Konsumen*/"BPSK").[37] The assertion of the regulation is limited to the application of standard clauses and does not include standard contract stated in the discussion of the Consumer Protection Bill ("Bill"), both in the deliberative body meeting, on December 3, 1998 and in the working committee meeting between the DPR as the proposer and the Government, on March 15, 1999 and as stated in the issue inventory list dated February 8, 1999; ii) The Insurance Law, whose regulation focuses more on regulating insurance business as an economic and business activity, which in the opinion of the government, in this case the ministry of finance, regulates insurance as an agreement between the insurer and the insured regulated in Book III of the Civil Code and the Commercial Code, the regulation is considered still relevant.[38] This assumption is contradictory to government's own reasons when submitting the proposal for the establishment of this law, on one hand the government proposed changes to Law No. 2/1992 concerning Insurance Business, because this law is almost 20

[37] Dewan Perwakilan Rakyat Republik Indonesia, "Risalah Rapat Badan Musyawarah DPR RI tentang Pembahasan RUU tentang Perlindungan Konsumen, tanggal 3 Desember 1998," https://berkas.dpr.go.id/perpustakaan/sipinter/files/sipinter-2957-255-20230131092733.pdf, 16–21.
[38] Dewan Perwakilan Rakyat Republik Indonesia, "Naskah Akademik RUU tentang Usaha Perasuransian," https://berkas.dpr.go.id/arsip/file/Lampiran/leg_1-20200612-093857-6749.pdf, 4.

years old, therefore it needs to be immediately adjusted to the current challenges and conditions. While on the other hand, the Civil Code and Commercial Code which are almost 200 years old are considered still relevant by the Government.[39] Considering the age of these two provisions and conformity with the philosophical, juridical and sociological values of the nation, changes of both regulations become a top priority for the government to support the implementation of insurance activities, because insurance is essentially a contract.

Since the enactment of Law No. 21/2011 on the Financial Services Authority, regulation and supervision of the insurance industry is no longer implemented by the government, in this case the ministry of finance, but it is implemented by OJK. In carrying out its duties and functions, OJK has issued regulations related to standard contract, including: i) POJK No. 6-7-2022; and ii) SEOJK No. 13-7-2014 concerning Standard Contract. These two provisions are issued in order to provide protection to consumers in the financial services sector, whose purpose of its formation is in accordance with the mandate of the Consumer Protection Law or in other words these two provisions are implementing regulations of the Consumer Protection Law. In practice, regulations issued by OJK sometimes regulate more than the Consumer Protection Law, such as POJK No. 6-7-2022, where this provision regulates standard contract without explaining further definitions and provisions regarding standard contract. Ironically, further provisions are regulated in the form of circulars letter, which according to Law No. 12/2011 on the Establishment of Laws and Regulations ("the Establishment of Laws and Regulations Law") are not laws and regulations.

While conventional insurance standard contract is regulated in: i) POJK No. 69-05-2016 as amended by POJK No. 38-05-2020; and ii) POJK No. 23-5-2015 on Insurance Products and Marketing of Insurance Products. These two regulations regulate the provisions previously regulated in Government Regulation No. 73 of 1992 on the Operation of Insurance Business and Decree of the Minister of Finance No. 422/KMK/2003 of 2003 on the Operation of Insurance Companies and Reinsurance Companies. These two provisions are issued in order to support insurance business activities, whose purpose of formation are in accordance with the mandate of the Insurance Law.

In insurance business practice, POJK is an implementing regulation of the Insurance Law, however OJK often makes regulations that are not in accordance with the aims and objectives of the establishment of the Insurance Law, such as: i) setting minimum requirements that must be included in the policy as stipulated in Article 11 POJK No. 23-05-2015, as if changing or adding to the general provisions for making policies as stipulated in Article 256 of the Commercial Code; and ii) the provisions of Article 18 paragraph (2) of POJK

[39] Dewan Perwakilan Rakyat Republik Indonesia, "Naskah Akademik RUU tentang Usaha Perasuransian."

No. 23-05-2015 explicitly negate the role and function of BPSK in resolving consumer disputes and supervising the application of standard clauses. In addition, regulations issued by OJK have not been able to protect the insured in the application of conventional insurance standard contract, including: i) vagueness or absence of regulations regarding the application of policies that fully adopt policies applied in other countries or arrangements for the application of laws or jurisdictions of other countries in insurance policies applied in Indonesia. Such a situation is not regulated in Article 11 letter (n) and Article 18 POJK No. 23-05-2015, therefore its application is often used as a loophole or argument for the insurer to reject the claim submitted by the insured; ii) the absence of the insurer's obligation to explain the contents of the policy to the insured; iii) unclear provisions as stipulated in Article 25 POJK 23-05-2015 on the consequences of applying the policy that harms the insured. Where the consequences for violating this provision are only in the form of recommendations for changes in the contents of the policy. These consequences are not proportional to the losses suffered by the insured; and iv) the provisions of Article 24 paragraph (2) of POJK No. 69-05-2016 as amended by POJK No. 38-05-2020, regulate the provision of a period for insured to learn the policy only applicable to coverage above one year, while for policies whose coverage is under one year and microinsurance, the insured has no time to learn the content of the policy.

As stated above, neither the government nor OJK have issued adequate regulations or at least attempted to propose changes to Book III of the Civil Code and Commercial Code, where these two provisions are fundamental of conventional insurance standard contract, which if amended, these two provisions can provide maximum protection in the application of conventional insurance standard contract in Indonesia. In other words, the role of the government and OJK has not provided maximum legal protection for the insured in the application of conventional insurance standard contract.

3.1.2. The Ideal Form of Legal Protection

According to Wolfgang Friedmann, the state must be present to provide protection through the formation of legislation and regulates in such a way the obligations of each individual so as to provide equality, and in its implementation of conventional insurance standard contract need to be regulated in a law. The content of implementing regulations of the legislation itself, should also regulates certain limitations on more parties strong in determining the conditions for the weaker.[40] In the event that the existing regulations are inadequate or even the absence of a regulation regarding conventional insurance standard contract, the formation or changes in the substance of the legislation can be done by applying the type of changes from

[40] W. Friedmann, *Legal Theory*, 5th ed. (New York: Columbia University Press, 1967), 400–401.

within the law (point of origin) and having an impact outside or to the community (point of impact).[41]

In line with Friedmann opinion, according to Moch. Isnaeni, in the business activities, regulations are needed to protect the parties who enter a contract. This protection is in the form of external and internal legal protection, where external legal protection is created by the regulator through the formation of laws and regulations, which aims to anticipate losses and injustice and to avoid exploitation efforts from one of the parties who has a stronger bargaining position in entering a contract, therefore in its implementation the weaker party still gets a reasonable advantage.[42] Meanwhile, internal legal protection is created by the parties in a contract in the form of mutually regulated provisions to protect their respective interests.[43]

As Friedmann and Isnaeni thought, in the application of conventional insurance standard contract, adequate legal protection is needed through the formation of laws and regulations to create equality and the regulation includes giving certain limits to the insurer, and in its implementation, it is necessary to supervise and impose sanctions if violations are found. Such an arrangement can mean that external legal protection has been fulfilled, while internal legal protection is fulfilled by itself through laws and regulations formed in the framework of external legal protection itself. Laws and regulations are made and regulated in such a way in stages ranging from laws to implementing regulations. In the event that there are inadequate arrangements, changes to the regulations can be implemented from within the law and have an impact on the community. Furthermore, the laws and regulations formed must be in accordance with the highest norms and their formation is determined by other norms, which influence each other to form a unity of legal order, ranging from the highest to the lowest, the highest is called Hans Kelsen *grundnorm*, where *grundnorm* is the highest basis of the validity of the overall norm of legal order. While *grundnorm* on the structure of the legal system in Indonesia, A. Hamid Attamimi places Pancasila (Preamble to the Constitution) as the fundamental norm of the state, whose rationale come from the comparison of *stufenbau* theory initiated by Kelsen and developed by Hans Nawiasky.

Legal protection in the application of conventional insurance standard contract can be said to be ideal if there is a law along with its implementing regulations, formed in stages and based on other norms in a series of legal systems, which is aimed at meeting external and internal legal protection, and the regulation has included efforts to create equality and certain restrictions on parties with stronger bargaining position. In addition, simultaneously,

[41] W. Friedmann, *Law in a Changing Society* (London: Stevens & Sons Limited, 1959), 269–270 in Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak* (Jakarta: Program Pascasarjana Universitas Indonesia, 2004), 31.
[42] Moch. Isnaeni, *Seberkas Diorama Hukum Kontrak* (Surabaya: Revka Petra Media, 2018), 41–42.
[43] Isnaeni, *Seberkas Diorama,* 41–42.

supervisory measures are carried out, sanctions are imposed for violators, the content of regulations is formed from within the law and has an impact on society, and the values contained in the regulation are intrinsic to the values of Pancasila, which then the regulation is consistently obeyed by all parties. In other words, the context of ideal legal protection in the application of conventional insurance standard contract, changes are needed: i) the Civil Code and/or Book III of the Civil Code which regulates the general principles of contract or engagements, including: (a) regulating the affirmation of the shift in the meaning of the principle of freedom of contract and other legal principles of contract, (b) material adjustments to the content of regulations must be in accordance with the values contained in Pancasila, (c) the consequences of the nullity of the standard contract and (d) the definition, arrangement of forms, general principles and restrictions, and supervision of the application of the standard contract; ii) The Commercial Code by combining these provisions in the Civil Code and/or Book III of the Civil Code, set forth in a separate book or chapter (Special Contract or Insurance Contract), is placed after the regulation of the general principles of the contract, the provisions of which specifically regulate: (a) the following insurance contract with insurance principles that have been in accordance with the development of contract and insurance law, (b) restrictions on the application of conventional insurance standard contract, (c) consequences of cancellation of insurance contract, (d) supervision and sanctions, and (e) material adjustments to regulatory content must be in accordance with the values contained in Pancasila; iii) the Insurance Law, whose amendments include: (a) the principles of conducting conventional insurance business activities and separating sharia insurance arrangements from these provisions (sharia insurance business is made in a separate law), (b) not regulating general or specific provisions or principles regarding insurance contract, (c) restrictions on the operation of insurance business activities, (d) the appointment of agencies that supervise insurance business activities, (e) the application of sanctions, and (f) the provisions of insurance business must be in accordance with the Civil Code and/or Book III of the Civil Code (amendments) concerning Insurance Contract; iv) POJK serves as an implementing regulation of the Civil Code and/or Book III of the Civil Code (amendments) concerning Contract or Engagements, concerning Insurance Contract and Insurance Law. Therefore, it is necessary to adjust all POJK provisions with the Civil Code and/or Book III of the Civil Code (amendments), especially those related to insurance contract and the Insurance Law. The rest of the regulation is aimed at strengthening and improving the aspects of education for the insured, supervision of the course of insurance business activities, and providing sanctions for parties who violate, as well as eliminating a rule as outlined in the form of a circular letter.

The process of forming each of the above laws and regulations, refers to the Constitution and the Establishment of Laws and Regulations Law. Through

such laws and regulations, undoubtedly the application of conventional insurance standard contract can run orderly and fairly. This is in line with Rawls argumentation, in terms of formal justice — rule of law and compliance with regulations — then it tends to find substantive justice.[44] The theory of justice initiated by Rawls emphasizes substantive justice and the process of forming basic rules that apply in society in order to provide justice for everyone.[45] Therefore, a rule, no matter how efficient and tidy the rule is, must be abolished if it is unfair.[46] Rawls further stated that the theory of justice in its implementation cannot ignore the basic structure of society which is the main subject of the principle of justice.[47] The basic structure of society referred to by Rawls, in its application in Indonesia can be equivalent with Pancasila, which is also the legal ideal (*rechtsidee*) of the Indonesian.

3.2. The Legal Ideal (*rechtsidee*) and the Ideal Conception of Justice

3.2.1. The Legal Ideal (*rechtsidee*) of the Republic of Indonesia

According to Kusumaatmadja, the idea of law (*rechts-idee*) of the Republic of Indonesia proclaimed August 17, 1945, a popular (democratic) republic established by the nation's fighters with the motto "... from the people, by the people, for the people". This idea is briefly formulated that the Republic of Indonesia is a state of law.[48] According to Attamimi, the term idea of law (*rechtsidee*) in the explanation of the Constitution is considered inappropriate, because 'idea' means desire, will or a hope, while the term *rechtsidee* itself is more appropriate when translated as 'legal ideal', considering that the mind is an idea, feeling, creation, and thought. Thus, the five precepts of Pancasila in their position as the legal ideal of the Indonesian people in the life of society, nation and state are positively "Guiding Stars" that provide guidance in all activities to provide content to each legislation, and negatively constitute a framework that limits the space for movement of the contents of the laws both individually and collectively, in a single part and in pairs is the principle common law.[49] Therefore, Pancasila as a fundamental state norm and at the same time as a legal ideal (*rechtsidee*) is the source and basis and guideline for the body of the

[44] John Rawls, *Teori Keadilan*, 71–72.
[45] John Rawls, *Teori Keadilan*, 71–72.
[46] John Rawls, *A Theory of Justice, Revise Edition* (Cambridge, Mass: Harvard University Press, 1999), 3.
[47] John Rawls, *Teori Keadilan,* 11.
[48] Mochtar Kusumaatmadja, *Pemantapan Cita Hukum dan Asas-Asas Hukum Nasional di Masa Kini dan Masa yang Akan Datang* (Makalah disampaikan pada Seminar Tentang Temu Kenal Cita Hukum dan Penerapan Asas-Asas Hukum Nasional, Badan Pembinaan Hukum Nasional Departemen Kehakiman, Jakarta 22-24 Mei 1995) in Mochtar Kusumaatmadja, *Konsep-Konsep Hukum,* 179.
[49] A. Hamid Attamimi, *Peranan Keputusan Presiden RI dalam Penyelenggaraan Pemerintahan Negara* page 308-323 in Maria Farida Indrati S., *Ilmu Perundang-undangan, Jenis, Fungsi dan Materi Muatan* (Yogyakarta: Kanisius, 2014), 59.

Constitution as the basic rules of the state or the basic rules of the state (*verfassungnorm*) and other laws and regulations.[50]

3.2.2. The Ideal Conception of Justice

From various views on the conception of justice initiated by philosophers and legal scholars, ranging from Greek era to modern era, there are several ideas that have the same view of the conception of justice, which is the theory of justice depends on the theory of society. In Indonesia, the theory of society or the basic structure of society is based on Pancasila. Pancasila is essentially a legal idea (*rechtsidee*) manifested in the points of thought intrinsic in the preamble to the Constitution.[51] Pancasila as the source of all laws has been reaffirmed in the form of norms as specified in Article 2 of the Establishment of Laws and Regulations Law. Thus, the ideal conception of justice for the Indonesia written in the conception of social justice as stated in the fifth precept of Pancasila or can be said to be the conception of Pancasila justice.

According to Notonagoro, justice is a virtue that moves and lightens human creation, taste and work to always give all rights belonging to others or what should be received by others who are entitled therefore everyone has the same opportunity to carry out their rights and obligations without hindrance.[52] Furthermore, Notonagoro stated that social justice is the equality of the essence of the meaning of justice.[53] The meaning of fair itself can be interpreted that the essence of justice is the fulfillment of right and obligation with one another in living together in a society.[54]

3.3. Analysis of Pancasila Justice Conception Implementation in the Regulation of Statutory Provisions Related to Standard Conventional Insurance Contract in Indonesia

Moving away from the injustice in the application of conventional insurance standard contract in Indonesia as a symptom, caused by the absence of existing rules or regulations that considered inadequate. Therefore, the author proposes Pancasila justice concept as a solution to overcome injustice in the application of conventional insurance standard contract in Indonesia, by implementing the conception of Pancasila justice therefore it can be applied within the scope of civil law, especially the law of contract and conventional insurance standard contract in Indonesia.

Pancasila is the result of contemplation of the soul and the essence of careful thinking based on knowledge and life experience.[55] The elements and intrinsic values

[50] Indrati S., *Ilmu Perundang-undangan, 59.*
[51] Padmo Wahjono, *Negara Republik Indonesia* (Jakarta: CV Rajawali, 1982), 9.
[52] The understanding of justice that has been formulated by the National Design Council (Dewan Perancang Nasional /Depernas) and the Provisional People's Consultative Assembly (Majelis Permusyawaratan Rakyat Sementara /MPRS). In Notonagoro, *Pancasila Secara Ilmiah Populer* (Jakarta: PT Bina Aksara, 1983), 173.
[53] Notonagoro, *Pancasila Secara Ilmiah Populer,* 169.
[54] Notonagoro, *Pancasila Secara Ilmiah Populer*, 190.
[55] Notonagoro, *Pancasila Secara Ilmiah Populer*, 24.

of Pancasila have been owned and practiced in the customs, culture and religions of Indonesian,[56] even before the Indonesia became independent. The conception of social justice for all Indonesian people is no longer an idea or conception, but has become one of the basic philosophies, state ideology, outlook on life of the Indonesian people and has become one of the principles of law in Indonesia.

The principle of social justice is one of the principles contained in the Constitution and its Preamble which is a reflection of the philosophy of Pancasila.[57] Therefore, the points contained in the Preamble to the Constitution, must form the idea of law (*rechtsidee*) which will be the basis for all written and unwritten laws and implementing regulations.[58] Article 1 paragraph (3) of the Constitution confirms that Indonesia is a state of law and Article 2 of the Establishment of Laws and Regulations Law confirms that Pancasila is the source of all laws of the Republic of Indonesia. Therefore, according to the author, there is no need to interpret intrinsic '*rechtsstaat'* or 'the rule of law'. On the contrary, moving from the two laws and regulations, it can be interpreted that the Republic of Indonesia is a state of law based on Pancasila.

In relation to the scope of civil law, especially those that include the law of contract and conventional insurance standard contract, the Constitution has provided a basis for the validity of regulatory norms based on Article 28D paragraph (1), Article 28G paragraph (1), Article 28J, and Article 33 paragraph (4) of the Constitution. In addition to the preamble to the Constitution, Article 1 paragraph (3) of the Constitution and the last four articles of the Constitution, in realizing the Pancasila principle of justice therefore it can be applied in regulating the provisions of laws and regulations related to conventional insurance standard contract in Indonesia, must comply with the principles of the formation of laws and regulations as outlined in Article 2, Article 5, Article 6, Article 7 and other related provisions as stipulated in the Establishment of Laws and Regulations Law.

The above provisions are in line with Kelsen's *stufenbau* theory, in which law regulates its own formation, and a legal norm determines the way other legal norms are made in a series of norm systems to a certain degree and determines the content of other norms. The unity of one norm, that is, the lower norm is determined by a higher norm, which is determined by another higher norm, and this series of processes of law formation is ended by a supreme *grundnorm*, which because it is the highest basis of the validity of the whole legal order, forms a unity of legal order.[59] In other words, law is valid if it is made by the institution or authority authorized to form it and is sourced and based on higher norms, therefore lower norms (*inferior*) can be formed by higher norms (*superior*), and the law is tiered to form a hierarchy.[60] Nawiasky developed Kelsen's *stufenbau* theory, suggesting that *staatsfundamentalnorm* is the basic norm for the establishment of a country's

[56] Notonagoro, *Pancasila Secara Ilmiah Populer*, 5.
[57] Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan,* 187.
[58] Padmo Wahjono, *Negara Republik Indonesia*, 11–12.
[59] Hans Kelsen, *General Theory of Law and State,* trans. Raisul Muttaqien (Bandung: Nusa Media, 2010), 179
[60] Indrati S., *Ilmu Perundang-undangan*, 23.

constitution (*staatsverfasung*). The position of a *staatsfundamentalnorm* is the basis for the formation of the constitution, whose existence predates the constitution.[61] Therefore, Nawiasky considers that the highest norm (basic norm or *grundnorm*) in a country is not called *staatsgrundnorm,* but *staatsfundamentalnorm* or fundamental norm of the state.[62] Furthermore, Attamimi by comparing the theories of Kelsen and Nawiasky, placing Pancasila (Preamble to the Constitution) as the fundamental norm of the state in the structure of the legal system in Indonesia[63] (the placement of Pancasila as the fundamental norm of the state was first proposed by Notonagoro).[64] Pancasila is seen as the mind of the law (*rechtsidee*) and as the guiding star. This position requires the formation of positive laws aimed at achieving the ideas in Pancasila. With the establishment of Pancasila as a fundamental state norm*,* the formation of law and its implementation cannot be separated from the values of Pancasila.[65] Thus, the preamble of the Constitution in which the intrinsic values of Pancasila became the basis for the formation of norms below it, such as the body of the Constitution, laws and regulations below it. That is, Pancasila (Preamble to the Constitution) determines the establishment of Article 1 paragraph (3), Article 28D paragraph (1), Article 28G paragraph (1), Article 28J, and Article 33 paragraph (4) of the Constitution, then the provisions in the Constitution determine and become the basis for validity for the formation or change of laws and regulations related to conventional insurance standard contract in Indonesia, which in the process and procedures for formation are determined by other norms, namely the Establishment of Laws and Regulations Law.

Pancasila principle of justice, namely the fulfillment of right and obligation in the context of living together in society.[66] The praxis of Pancasila justice applies triangle of justice interrelation, namely distributive justice, obedient justice, and commutative justice to provide what has become the right of each human being to fulfill justice against himself and against God (*causa prima*).[67] Distributive justice is a relationship between the state and its citizens, one of which is manifested through legislation. In distributive justice, the state in certain circumstances can take special measures through the establishment of laws and regulations to protect the weaker party. The purpose of this justice is to realize justice that applies equally between rights and obligations for fellow citizens and simply can be interpreted as non-discrimination treatment, without discriminating ethnicity, religion, race and/or

[61] A. Hamid Attamimi, *Peranan Keputusan Presiden Republik Indonesia dalam Penyelenggaraan Pemerintah Negara: Suatu Studi Analisis Mengenai Keputusan Presiden yang berfungsi Pengaturan dalam kurun waktu Pelita I-Pelita IV* (Jakarta: Disertasi Ilmu Hukum Fakultas Pascasarjana Universitas Indonesia, 1990), 287 in Jimly Asshiddiqie and M. Ali Safa'at, *Teori Hans Kelsen Tentang Hukum* (Jakarta: Konstitusi Press, 2022), 154–155.
[62] Attamimi, *Peranan Keputusan Presiden.*
[63] Attamimi, *Peranan Keputusan Presiden,* in Asshiddiqie and Safa'at, *Teori Hans Kelsen*, 155.
[64] Notonagoro, "*Pembukaan UUD 1945 (Pokok Kaidah Fundamentil Negara Indonesia)*" *dalam Pancasila Dasar Falsafah Negara* (Jakarta: Pantjuran, tanpa tahun) in Asshiddiqie and Safa'at, *Teori Hans Kelsen,* 155.
[65] A. Hamid Attamimi, *Peranan Keputusan Presiden,* 309 in Asshiddiqie and Safa'at, *Teori Hans Kelsen*, 155.
[66] Notonagoro, *Pancasila Secara Ilmiah Populer.*
[67] Notonagoro, *Pancasila Secara Ilmiah Populer*, 163.

group.[68] Obedient justice is a relationship between the state and its citizens with the emphasis on the necessity of every citizen to obey the state or in other words every citizen has the obligation to obey the consistent application of public norms for mutual progress to achieve to social justice. The purpose of this justice is for the prosperity and well-being of the nation.[69] Commutative justice is a relationship between fellow citizens, which is expected to create an act of giving and receiving and respecting every right or obligation of each citizen. In realizing this type of justice, it can be done through a wise action from each citizen and through the formation of laws and regulations.[70] This justice can be interpreted as justice in the civil context, which according to the author in its application does not stand alone, but is interdependent and applied simultaneously with each other in its order. That is, the realization of Pancasila justice depends on the upholding of distributive justice which is realized through obedient justice, therefore commutative justice can be carried out harmoniously in harmony.

Civil law from the perspective of civil philosophy, contains pairs of core values, which in practice also apply to the law of contract and conventional insurance standard contract. The pair of core values include: legal certainty and legal comparability; legal protection and legal regulation, each of which forms a mutually tense pair and demands their compatibility through the implementation and application of civil law. To achieve justice in the implementation of civil law, it is necessary to aim and strive as much as possible to create harmony between legal certainty and legal comparability, as well as harmony between legal protection and restrictions,[71] These two pairs of core values are intrinsic to the Pancasila principle of justice. Because the Indonesian state is based on law, in addition to establishing substantive justice criteria, these criteria need to be written into laws and regulations in order to provide legal certainty so that in its application it can meet the Pancasila principle of justice. From the perspective of civil philosophy, the justification of regulating private interests through laws and regulations governing the public interest, is realized through commutative justice and distributive justice and obedient justice as a consequence of the application of distributive and commutative justice.

The triggers of injustice as stated above, can be grouped into three categories, namely: *First*, the problems of philosophical and sociological foundations and the validity of conventional insurance standard contract; *Second*, the issue of format of conventional insurance standard contract; *Third*, the problem about the content of conventional insurance standard contract. Unfairness in the implementation of conventional insurance standard contract in Indonesia arises due to the absence of existing rules or inadequate regulation. These three categories contradict the pair of basic values of civil law, especially in terms of compatibility between legal

[68] Notonagoro, *Pancasila Secara Ilmiah Populer*, 161–174.
[69] Notonagoro, *Pancasila Secara Ilmiah Populer*, 161–174.
[70] Notonagoro, *Pancasila Secara Ilmiah Populer*, 161–174.
[71] Purnadi Purbacaraka and A. Ridwan Halim, *Filsafat Hukum Perdata dalam Tanya Jawab* (Jakarta: PT RajaGrafindo Persada, 1995), 1–5.

comparability, and legal restrictions or in other words the phenomenon is contrary to the principle of guarantee in the context of civil law.[72]

In conventional insurance standard contract, the two pairs of basic civil law values are applied differently or special action is needed, considering that conventional insurance standard contract are made and their contents are determined by one party, namely the insurer. Therefore, the interest of the insured as a weaker party takes precedence or get special attention in order to create equality and protection from arbitrariness in its application. The three categories of triggers of injustice in relation to both pairs of basic civil values, can be described, as follows: i) Legal certainty related to problems: (a) philosophical and sociological foundations and the validity of conventional insurance standard contract arrangements, (b) the format of a conventional insurance standard contract, (c) the content of conventional insurance standard contract. For example, among them: Civil Code and Commercial Code are regulations left by the Dutch colonial, where the content of the provisions is not in accordance with the philosophical and sociological requirements of the nation; Regulations on conventional insurance standard contract have not been regulated through statutory-level regulations; and Various regulations related to standard contract only focus on setting standard clauses and do not include material and formal aspects; ii) Legal Comparability. One example of the absence of legal comparability is reflected in the regulation of Article 251 of the Commercial Code on the obligation to provide correct information only imposed on the insured; iii) Legal Protection. In the absence of regulations or inadequate regulations, legal protection has not been fulfilled. In this context, the emphasis of protection is intended for the insured, because conventional insurance standard contract is made unilaterally by the insurer. Legal protection against the application of conventional insurance standard contract has not been regulated concretely. For example: OJK regulation do not apply firm and concrete sanctions in the event that the insurer applies an insurance policy that is not in accordance with the specimen reported to OJK; iv) Legal Restrictions. With regard to restrictions on the application of conventional insurance standard contract, it does not include on the formal and material aspects. The emphasis of legal restrictions is intended for insurer in drafting conventional insurance standard contract, considering that conventional insurance standard contract is made unilaterally by the insurer.

Thus, to overcome the injustice in the implementation of conventional insurance standard contract in Indonesia, it can be resolved through the application of the principle of Pancasila justice, by referring to the criteria of Pancasila justice, among others, as follows: i) every citizen is obliged to provide rights that should be owned by others (commutative justice); ii) in the event that one party does not give the other party its rights, it is contrary to the principle of commutative justice or considered to be unfair; iii) if there is injustice against the weaker party, distributive justice is needed to take special measures to benefit the weaker party, because

[72] Purbacaraka and Halim, *Filsafat Hukum Perdata*, 1–5.

Pancasila justice requires the protection of the weaker party. These special measures are realized through the establishment of laws and regulations. The three criteria are formed from conformity in the application of distributive, obedience and commutative justice. The Pancasila triangle of justice interrelation is interdependent on each other, which if applied simultaneously and consistently will create the essence of justice itself. In realizing it, can be done through changes or the establishment of statutory provisions related to conventional insurance standard contract in Indonesia, implemented in accordance with Friedmann's statement, where the arrangements are made in such a way as to create equality, and their implementation must be adequately supervised with concrete sanctions through tiered provision arrangements to the lowest implementing rules, and changes are made from within the law (point of origin) to have an impact on society (point of impact). Likewise, Isnaeni stated, in order to provide protection for the insured, it can be realized through external protection by forming firm or adequate regulations. Meanwhile, internal protection is realized through increased education for the insured, which is provided by the government or OJK as the regulator and supervisor of the insurance business, therefore Pancasila principle of justice can be realized in laws and regulations related to conventional insurance standard contract.

The description of the background of injustice in the application of conventional insurance standard contract, the basis for the validity of norms, the conception of Pancasila justice, the perspective of civil philosophy in relation to the principle of justice, and the criteria for Pancasila justice as stated above, can be used as a justification for the application of the Pancasila principle of justice in regulating laws and regulations related to conventional insurance standard contract in Indonesia.

4. CONCLUSION

The ideal regulation provides protection for the insured in the statutory provisions related to Indonesia's conventional insurance standard contract in order to realize the Pancasila principle of justice, namely through the formation of regulations and implementing regulations, which are formed in stages and based on other norms in the series of legal systems. The objectives of the establishment include external and internal legal protection, as well as creating certain equality and restrictions to protect those with weaker bargaining positions. The regulations formed are applied simultaneously with supervisory measures, concrete sanctions. The content of regulations is formed from within the law and has an impact on society, and the values contained in the regulations are intrinsic Pancasila, which then the regulations are consistently obeyed by all parties. The intrinsic values of Pancasila are realized through the application of the Pancasila principle of justice in the regulation of conventional insurance standard contract in Indonesia by applying the Pancasila triangle of justice interrelation, which refers to the criteria of Pancasila justice, namely: i) every citizen is obliged to provide rights that should be owned by others (commutative justice); ii) in the event that one party does not give the other party its rights, it is contrary to the principle of commutative justice or is considered to be unfair; iii) If there is injustice to the weaker party, distributive justice is required to take special

measures to protect the weaker party. These specific measures are realized through the establishment of laws and regulations and must be complied with by all parties within the framework of obedient justice. The three criteria are formed from conformity in the application of distributive, obedience and commutative justice. In the application of Pancasila triangle of justice interrelation is interdependent on each other and applied simultaneously with each other in its order. That is, the realization of Pancasila justice depends on the upholding of distributive justice manifested through obedient justice, so that commutative justice can be carried out harmoniously in harmony, which in the end will undoubtedly be the essence of justice itself.

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