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Inequality of the principle of utmost good faith in insurance law: Lessons from Indonesia

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Abstract

This article aims to critically review the existence of the unbalanced application of the utmost good faith principle within Indonesia's insurance industry. It also examines the implications of the recent Constitutional Court decision, which conditionally declared the utmost good faith in Article 251 of the Indonesian Commercial Law Code unconstitutional. The study employs normative legal research using primary and secondary legal materials, focusing on laws and insurance regulations, case law, court decisions, and legal principles relevant to the research topic. The findings indicate that, despite its widespread recognition, the implementation of the principle of utmost good faith in Indonesia has been characterized by significant inequality between insurers and insured parties. The principle's ambiguous characteristics result in challenging interpretations, as evidenced by the court decisions. The courts expand the principle, leading to subjective and potentially biased applications. In conclusion, the issuance of the Constitutional Court decision is meant to rectify these disparities. It has significantly impacted the country's insurance industry and all its stakeholders. Stakeholders must reassess and adapt to the new reality of the utmost good faith principle, ensuring a balanced responsibility between insurers and insured parties.

Keywords: Indonesian insurance law, Insurance principle, Insured, Insurer, Utmost good faith.

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1. Introduction

The principle of "utmost good faith" (hereinafter referred to as "UGF") is an important element of insurance law and originates from the general principle of good faith in Roman law. This principle was first introduced in the context of contractual agreements and litigation, where it served as a fundamental ethical standard [1]. In other words, as noted by Giliker [2], the requirement to engage in good faith negotiations for commercial contracts is widely considered a principle of civil law, distinguishing it from common law.

According to Katie and John [3], the idea of "UGF" is itself problematic. The term refers to a special level of contract known as "uberrimae fidei," which implies that all other contracts require only an ordinary level of good faith. However, interpreting the term “uberrimae fidei” too literally might defeat the actual intention of the term. UGF is not substantially more meaningful than ordinary good faith. For insurance-related activities, the adjective “utmost” requires that both the insurer and the insured perform in good faith to the greatest extent possible, Fred Hawke [4].

Anifalaje [5] says that the doctrine of "uberrimae fidei" plays a crucial role in all insurance contracts. This doctrine imposes an obligation on all parties to act towards each other in full good faith. This includes the obligation to disclose all relevant material facts and to refrain from misrepresenting the facts, both before the contract is signed and during the term of the contract [5]. The unique nature of the insurance business also manifests itself in its contract form, making insurance contracts highly complex agreements. Therefore, insurance contracts need to be built on several basic principles that are based on integrity and fairness. Among these principles, the concept of UGF plays one of the most important roles and has been recognized in various legal jurisdictions [6].

According to Maunah et al. [7], insurance offers several benefits, categorized as primary, secondary, and other functions. The main role of insurance lies in its ability to transfer risk from individuals or businesses to the insurer, effectively acting as a financial safety net. Its secondary role includes stimulating business growth, preventing and controlling losses, providing social benefits, and serving as a savings. Additionally, insurance functions as an investment fund and generates invisible income. The insurance agreement necessitates good faith at every stage of its execution [7].

The principle of good faith mandates that all parties involved in a contract conduct themselves with honesty and integrity throughout the entire stage of the contract. This includes not only the initial negotiation stages, where the foundations of the agreement are established, but also extends to the execution stage, where the parties are expected to carry out their respective obligations under the contract. The commitment to act (and to continue acting) in good faith helps to promote fairness and prevent opportunistic behavior that could undermine the intent of the contractual relationship [8]. Conversely, the failure to act in good faith may result in two main consequences. Firstly, the offending party may be sued for damages resulting from actions that are contrary to good faith. Secondly, the contract can be altered, modified, or even terminated if there is a change that disrupts the balance between the parties involved. Under these circumstances, the affected party cannot be forced to proceed with the fulfilment of the contract, as guided by the principle of good faith [9].

It is worth noting that (especially in first-party insurance situations) the law has been established to provide sanctions that will benefit the insured and be assessed against the insurer for unreasonable “bad faith” delays and denials of benefits [10]. However, the concept of “good faith” (or its negative form, “bad faith”) continues to be considered vague with no legal meaning or sufficient force of resolution to provide definitive guidance to insurers, courts, and practitioners in dealing with insurance contracts, Burke [11].

Max Barret [12] notes that in various literature on insurance, it is acknowledged that the origin of the principle of good faith can be traced back to an English legal case: Carter v. Boehm in 1766, which marked a significant development. In this instance, Lord Mansfield asserted that good faith prevents a party from using their own knowledge to lead another party into an agreement by exploiting the latter's ignorance of certain facts and erroneous beliefs. The ruling underscored the insurer's dependence on the statements provided by the insured, emphasizing the prohibition against withholding crucial information to exploit the ignorance of the other party[12]. The case of Carter v. Boehm addresses the pre-contractual obligation to disclose relevant information. It should be noted that Lord Mansfield did not consider the obligations of the parties towards each other after the contract had been made [13].

Furthermore, in the English Marine Insurance Act of 1906 (MIA), the principle of UGF is recognized as an obligation that continues after the contract is formed. Sections 17 to 20 apply to all insurance and reinsurance contracts, not just those related to maritime activities. A contract in marine insurance is founded upon the principle of UGF. Any breach of this obligation can make the contract voidable, thus providing clear guidance for the parties involved [14].

The enactment of the Insurance Act 2015 introduced several modifications to the insurance regulations that were in force at the time. However, one key change that was made was related to the common law doctrines instituted by Lord Mansfield in the late 1700s. The 2015 Act establishes a new framework for addressing misrepresentation and non-disclosure by insureds [15]. It eliminates traditional remedies that allowed insurers to void contracts due to misrepresentation or non-disclosure based on the main obligation of good faith. Instead, it imposes an obligation of fair representation on the insured, providing insurers with a broader range of remedies if this duty is violated, Soyer and Tettenborn [16].

Shanty [17] asserts that the development of good faith in English case law has significantly influenced global jurisdictions, impacting also civil law insurance systems, including Indonesia. Although widely acknowledged, countries differ in how they incorporate and interpret this principle within their domestic laws, particularly in terms of scope and application standards.

Regardless of the differences in methodology, the starting point is always dominated by the principle of good faith (bona fides). Unlike the Common Law, legal practitioners' expectations of the creation of laws in the Civil Law system are much greater. The many existing laws and regulations encourage the assumption that every problem that arises in life is essentially determined with certainty by a legal provision [18].

The most pressing issue in Indonesian insurance law is that the Indonesian courts tend to extend the application of the UGF principle. As such, it became very common for insurance companies to use the basis of UGF as a defense in court. While upholding the principle of UGF has its merit, applying it extensively without considering other equally important principles has led to decisions lacking substantive justification. Among others, such decisions may affect the principles of justice and fairness [19]. It is worth noting from Ezinne and Chinelo [20] that deviations from the intended objectives of this principle have prompted concerns about ensuring fair treatment for all parties involved in insurance transactions [20]. For this reason, this study is needed to determine why and how the deviations occur and the efforts to overcome them.

The obligation to have UGF in insurance law is widely known. However, contract makers still have many difficulties regarding specific matters, for example, whether or not there is an offer and acceptance that results in the formation of a valid agreement. Therefore, the objectivity that generally underlies contract law also needs to be used in insurance law [21].

The legal landscape of the Indonesian insurance underscores the complexities presented by the practice of the UGF principle. In spite of its status as a main theory, its vague and abstract characteristics pose challenges for interpretation. As highlighted by Mulhadi and Harianto [22], this ambiguity is evident in courts' decisions where they often broaden the principle. It is crucial to recognize that such conditions have resulted in cases of inequitable treatment, with a clear tendency to favor the insurance company over the insured [22].

2. Methodology

This study is normative legal research that focuses on laws and regulations, court decisions, and legal principles related to the research topic. Primary and secondary legal materials are used. The primary legal materials consist of the Commercial Law Code (hereinafter referred to as "**CLC**"), case law, legislation, various insurance regulations, and decisions from the Constitutional Court (hereinafter referred to as "**CC**"). The secondary legal materials consist of journal articles, academic literature, and scholarly views. The legal materials approach is conducted to analyze Indonesian insurance laws and regulations, while the case approach is used to study court decisions related to the application of the UGF principle in insurance cases. These approaches are intended to answer two main issues, namely: (1) the unequal application of the UGF principle in Indonesian insurance law; and (2) the implications of the recent decision by the CC stating that the UGF principle is conditionally unconstitutional.

3. Results and Discussion

3.1. Understanding the Principle of UGF in Indonesian Insurance Law

In Indonesian, good faith is translated as "itikad baik". The word "baik" in Indonesian means good [23]. Etymologically, good faith is rooted in Arabic اِعْتِقَاد (i'tiqād), which means belief (faith). When translated into Indonesian, it is more appropriate to describe a person's religious beliefs or beliefs. However, in terminology, the "faith" in good faith can be interpreted as intention. Therefore, good faith means good intention to resolve disputes based on truth, benefit, and justice [24].

First and foremost, what needs to be clarified is why insurance contracts prefer the use of the concept of UGF rather than just ordinary good faith. "Good Faith" is an equitable doctrine that does not derive directly from the terms of the contract but is applied equitably by courts in the legal interpretation of insurance contracts. In the case of an insurer, an insurer may be deemed to be breaching its obligation of good faith by not treating an insured fairly when handling a claim. This breach occurs if the insurer refuses, without proper justification, to reimburse the insured for a loss covered by the insurance policy [25].

According to Mokhamad Khoirul Huda [26], the obligation of "UGF" should be differentiated from the concept of "good faith." Although both principles undeniably share the same foundation, which is a commitment to truth and honesty, there are also some distinctions between the two principles. For instance, while "good faith" requires a commitment to honesty in sharing information, it does not impose the obligation to reveal everything that the individual knows beyond what is being inquired. The emphasis of "good faith" lies in the intention to always answer correctly or reveal honestly every question asked by the insurer, while "UGF" emphasizes on the initiative of the insured to go beyond and also reveal important facts that are not asked or requested by the insurer [26]. Therefore, good faith should be understood from two perspectives: subjective and objective. From a subjective perspective, good faith involves the inner attitude of the parties, including honesty in making contracts and maintaining good faith. Whereas from an objective point of view, it refers to applicable norms, meaning that the contract is implemented according to agreed-upon norms [27]. Therefore, applying the principle of good faith can provide trust and confidence to each party and positively impact transactions [28].

Furthermore, the principle of good faith is also recognized by Indonesian contract law as a core principle [29]. This concept is outlined in Book III of the Civil Code on Agreements, specifically in Articles 1320, 1321, and 1338. The provisions regarding good faith, particularly in relation to the enforcement of agreements, mandate that all agreements must be executed in good faith [30]. Good faith is implementing an agreement by relying on norms of propriety and morality. The primary element of good faith in agreements is honesty [31].

Article 1338 of the Civil Code covers three points: (1) legally made agreements are binding; (2) agreements can only be revoked by mutual consent; and (3) agreements must be executed in good faith. Good faith means executing the agreement properly and appropriately, both at the time of signing and implementation. This general provision applies to all agreements, including insurance agreements [32]. In relation to an insurance agreement, every agreement must not only comply with Article 1338 of the Civil Code, but must also comply with Article 251 of the CLC, which stipulates that all information known to the insured about the insured object must be notified [33].

Article 251 of CLC states: "All false or incorrect notifications, or any concealment of circumstances known to the insured, even if made in good faith, which would have influenced the insurer's decision to enter into the agreement, or the terms under which it was agreed upon, render the insurance contract void, rendering the insurance void."

From the CLC Article 251 above, two things can be distinguished, namely [34]:

a. Providing incorrect or untrue information.

b. Omission of information regarding known circumstances.

Based on the wording of the article, it is clear that Article 251 of CLC only imposes the obligation to perform the UGF principle on the insured, whereas the insurer, in this case, the insurance company, is not even mentioned in the article. Article

251 of CLC serves as clear evidence that there is a notable imbalance between the insured and the insurer when it comes to the implementation of the UGF principle, Aida Malan Sari and Yenni Samri Juliati Nasution [35].

Feinman [25] asserts that the role of UGF is essential in maintaining justice and fairness in insurance contracts. In principle, it legally requires that all parties disclose all the necessary information that could affect their decision when entering the contract. This obligation applies equally to both insured and insurer, mandating transparency and openness to ensure that no significant information is withheld [25].

In practice, this obligation requires the insured to consistently provide thorough and accurate information about their insurance policy, ensuring that all relevant details are disclosed throughout the policy term. Once the insured has fulfilled this obligation by providing necessary information, the insurer is then prohibited from later contesting claims or denying coverage based on facts that were already known to them at the time of underwriting [36]. This prohibition fosters a fair and reliable relationship between the parties, ensuring that the insured is protected from unexpected denials for previously disclosed information [37].

3.2. Development of the Utmost Good Faith Principle in Indonesian Insurance Law

The development of the UGF principle in Indonesian insurance law began as early as its independence in 1945, specifically with the enactment of Chapter IX of the Commercial Code concerning Insurance, particularly Article 251. The Commercial Code is a law that has its origins in the Dutch colonial era and is still enforced in Indonesia.

Its history began in Europe, where on January 1, 1809, the Netherlands was colonized by France. As a result, the Netherlands as a colony also implemented the Code de Commerce, a set of laws created by France. However, after the Netherlands regained its independence on October 1, 1838, the Netherlands enacted *Wetboek van Koophandel*, a codification of commerce laws that was derived from the Code de Commerce. In Indonesia, as a Dutch colony, this rule was also implemented in the form of a codification of commercial law on April 30, 1847 [38]. Bearing in mind the long history of CLC, Article 251 is an outdated rule that is no longer in line with the development of modern law that emphasizes equality and protection of both parties. Article 251 of CLC only provides protection to one party, namely the insurer, while the rights of the insured are ignored without providing space to present their defense before the law. Since the enactment of CLC, the Indonesian Government has issued two laws on Insurance, namely Law No. 2/1992 and Law No. 40/2014. Furthermore, Law No. 4/2023 concerning the Strengthening and Development of the Financial Sector was also issued, regulating several financial sector ecosystems, including the insurance sector [38].

Although the Government has issued a number of regulations and laws concerning insurance, Article 251 of CLC has yet to be revoked. Table 1 outlines the development of the principle of UGF within Indonesian insurance laws and regulations.

3.2.1. Commercial Law Code

On August 17, 1945, Indonesia proclaimed its independence, and the following day the Constitution was promulgated. Article II of the Constitution states that all regulations that were in force prior to independence shall remain effective until replaced by national regulations. This means that the Dutch Commercial Code or *Wetboek van Koophandel* remained in force and only had its name changed to the Indonesian Commercial Law Code (CLC). In the CLC, insurance is regulated in Chapter IX on Insurance and Liability in General, in Articles 246 – 286, including Article 251 concerning UGF.

3.2.2. Law No. 2/1992 concerning Insurance Business

This law consists of 28 articles and came into effect on February 11, 1992. What is important to note is the Transitional Provisions, Article 26, which reads: "Legislation regarding insurance business that already exists when this Law comes into effect, if it is not in conflict with this Law, is declared to remain in effect." This conveys that the enactment of Law No. 2/1992 does not revoke the regulations related to insurance under the CLC, including Article 251, which governs the UGF principle. As a follow-up to Law No. 2/1992, several implementing regulations were issued by the government, namely: Government Regulation (hereinafter referred to as "GR") No. 73/1992, GR No. 63/1999, GR No. 39/2008, and GR No. 81/2008. All four GRs are about the Implementation of Insurance Business.

3.2.3. Law No. 40/2014 concerning Insurance

This law consists of 92 articles and came into effect on October 17, 2014. Law No. 40/2014 does not explicitly or firmly provide any stipulations regarding the UGF principle. With the enactment of Law No. 40/2014, there are two key takeaways to consider, specifically:

a. Law No. 40/2014 revokes and declares Law No. 2/1992 to be invalid.

b. Implementing regulations (GRs) of Law No. 2/1992 are declared to remain in force unless they are in conflict with the provisions of Law No. 40/2014.

However, provision of UGF under Article 251 of CLC, which benefits the insurer and burdens the insured, still remains in force.

3.2.4. Law No. 4/2023 concerning the Development and Strengthening of the Financial Sector

This law comes into effect on January 12, 2023, and regulates the strengthening of inter-institutional relations to achieve financial system stability. Provisions regarding insurance are specifically regulated in Chapter IV concerning Insurance, which consists of several articles. Although this law has amended and revised several articles of Law No. 14/2014 concerning Insurance, it does not mention anything about Article 251 of CLC. As a follow-up to the implementation of the provisions of this law, the Financial Services Authority (OJK) has issued several Financial Services Authority Regulations (POJK), as follows:

a. POJK 20 of 2023 concerning Insurance Products Linked to Sharia Credit or Financing
b. POJK 24 of 2023 concerning Business Licensing and Institutions of Insurance and Reinsurance Brokerage Companies

3.4.5. Establishment of the CC and Its Decisions

Since its promulgation on 18 August 1945, the Indonesian Constitution has been amended four times between 1999 and 2002. The amendments were made to limit the extensive powers of the executive body. The third amendment of the Constitution, which was enacted in 2001, established the CC [Articles 24(2) and 24C of the Third Amendment of the Constitution]. Finally, on January 3, 2025, the CC issued a remarkable decision No. 83/PUU-XXII/2024 declaring that Article 251 of CLC was conditionally unconstitutional.

Table 1.
Utmost good faith regulatory framework in Indonesian insurance law.

Acts / Ruling	**Article Related to Insurance**	**Implementing Regulations**	**Article(s) related to the Principle of Good Faith**
Indonesian Commercial Law Code	Chapter IX, Articles 246 – 286	Not available, left to the provisions of the parties	Article 251
Act No. 2/1992 concerning Insurance Business	Comprises 28 articles concerning Insurance Business	GR 73/1992; GR 63/1999; GR 79/2008; GR 81/2008	Article 27 para 4
Act No. 40/2014 on Insurance	Consists of 92 articles on Insurance, repealing Act No. 2/1992	GRs from Act No. 2/1992 still valid if not conflict with this Law	Article 31, Article 71 (1) & (2)
Act No. 4/2023 concerning the Development and Strengthening of the Financial Sector	Regulated in Chapter VI on Insurance, which revises the articles in Act No. 40/2014	POJK No. 20/2023, No. 24/2023, No. 5/2023 and 6/2023	No articles specifically address utmost good faith
The CC Decision No. 83/PUU-XXII/2024 2024 concerning Article 251 of CLC	Not available	Not necessary	Article 251 of CLC declared as conditionally unconstitutional

Source: Relevant Acts and Regulations on Utmost Good Faith.

It is clear that the acts and the ruling as a regulatory framework are designed to ensure that contractual relationships are built on mutual honesty. They outline the rights and obligations of the parties, aiming to enhance transparency and trust.

3.3. The Implementation of the UGF Principle in Indonesian Insurance Cases

Article 251 of CLC has long been the legal basis and guideline for agreements in the insurance industry in Indonesia. This article regulates the obligation of the insured to provide complete and correct information when applying for an insurance policy. If any information is found to be incomplete or inaccurate, the insurance company may reject the claim or cancel the policy, as shown in Table 2 below. In practice, this rule is often considered too burdensome for the insured, who may not fully understand the technicalities or details of the information required when applying for an insurance policy [19].

In general, good faith can be interpreted as an obligation mandated by the law, which is applicable to each party that is about to enter into an agreement, to provide to each other the complete and correct information or statements, which can influence the decision of the other party whether to enter into the agreement or not [30]. In regards to the insurance agreement, the obligation to provide these important facts applies throughout the following process: (1) when both parties are discussing and entering into to the contract; (2) when the parties agree to extend the term of the insurance contract; and (3) when changes occur to the insurance contract [39].

Basically, as a financial contract, insurance follows the principle of "Caveat Emptor," which means that the buyer alone is responsible for verifying the quality and conditions of the goods or services before the purchase is made [40]. The issue of compensation in the implementation of an insurance agreement is often polemic. The question always arises whether compensation needs to be carried out by the insurance company according to its promise. Although indemnity insurance has been around for centuries, in reality this issue remains controversial [41].

Insurance policies in Indonesia do not provide legal protection for customers due to the lack of transparency in the information contained within the insurance policy. This is because insurance policies have a standard format and are fixed, with the policy being issued first by the insurance company before the contract is agreed upon. In principle, an insurance policy or agreement should not contain sentences that are open to multiple interpretations. However, in reality, the policies prepared by insurance companies often include sentences that have hidden meanings and are open to interpretation, thus indicating a lack of transparency on the part of the company, which results in failed claims for policyholders [42].

Although the original purpose of Article 251 of the CLC is to protect insurance companies from moral hazard and adverse selection, which occurs when the insured hides important information that can affect the risk level, the application of this article is ultimately burdensome for the insured. The insured party, which is most often considered a “layman” in insurance transactions, may not always understand the gravity of information disclosure in the insurance process. Administrative ignorance or other mistakes made by customers in expressing certain information, even if the information may not be significant to the insured risk, may have an impact on the insurance policy.

Table 2 (see below) are notable cases that have been decided by the Supreme Court of the Republic of Indonesia (hereinafter referred to as “SC”) related to the application of Article 251 of CLC by insurance companies as samples.

3.3.1. The SC Decision No. 1420 K/Pdt [43]

This dispute occurred between Dahlan Sinambela as the plaintiff against the insurance company PT AXA Mandiri Financial Services as the defendant. The background was the death of Uli Sinambela (Dahlan Sinambela's father), where the insured would receive 100% of the insurance money if he died before the end date of the contract (p. 1). The insurer declined the insurance claim, citing a violation of UGF in Article 251 of the CLC by the insured regarding the principle of good faith because he did not fill out the form correctly and honestly. He has a medical history of being hospitalized for Vesicholithiasis (bladder stones) and Benign Prostate Hypertrophy (enlarged prostate). This information was not included in the Life Insurance Application Form (SPAJ) filled out when applying for life insurance (p. 2). The insurer declined the insurance claim, citing a violation of Article 251 of the CLC related to the principle of good faith. The insured allegedly failed to complete the form accurately and truthfully [43].

The insured stated that the person who filled out the form was a financial advisor who was an agent of the insurer. The insured entrusted everything to the insurer's agent and only signed the form (p. 4). At the district court level, the insured's lawsuit was accepted, but at the high court, it was rejected and the SC's decision upheld the high court's decision. The SC rejected Dahlan Sinambela's cassation application and accepted the insurance company's argument (p. 18) [43].

3.3.2. The SC Decision No 1987 K/Pdt [44]

In this case, PT Asuransi Recapital, as the insurer, filed a cassation against the High Court decision in favor of the insured [28]. The insured is the owner of the KLM Sinar Bunga Perdana ship. The insured has previously acknowledged and has not denied that the departure date of the KLM Sinar Bunga Perdana ship was June 19, 2008. Based on this detail, the insurer claimed that the insured violated the principle of utmost good faith because the insured provided information or material facts which are different from the information presented on the insurance coverage request form regarding the ship's departure date of June 24, 2008 (p. 25).

The insurer contested that because the insured had committed a misrepresentation, which violated the principle of utmost good faith based on Article 251 of the CLC, this warranted the insurer to carry out an automatic cancellation of the insurance policy without the insurer having to make a cancellation request. The insurer also asserted that it had no legal obligation towards the insurance claim filed by the insured (p. 28). The SC ruled the case in favor of the insurer, canceled the high court's appeal decision, dismissed the insured's lawsuit entirely, and ordered the insured to pay the costs of the proceeding.

3.3.3. The SC Decision No 1935 K/Pdt [45]

The 2012 Supreme Court decision was issued in relation to a dispute between an insurance company, PT Asuransi Harta Aman Pratama, and the insured, PT Pelayaran Manalagi. PT Pelayaran Manalagi is the owner of the Bayu Prima Ship, which was burned due to a fire. According to the contents of the insurance policy, the insured is entitled to insurance recovery from the insurer. The contents of the policy clearly state: "This insurance provides compensation for losses and damage to insured objects caused by fire, including the risk of fire caused by negligence by the captain or crew of the ship" (p.7). However, the insurer stated that it rejected the claim submitted by the insured for the following reasons (pp. 6,7): the insured had placed dangerous goods that did not comply with the permitted recommendations, and the amount of cargo or dangerous goods transported was very large, exceeding the amount permitted by the Port Authority.

The insurer determined that the insured violated Article 251 of the CLC and that the article was a special provision that applies regardless of the intent behind the insured's actions. The insurer emphasized that as long as the insured did not provide complete information regarding the actual condition of the insured object, which, if notified to the insurer, would have resulted in the insurer being unwilling to provide the insurance, then according to Article 251 of the CLC, this entitles the insurer to carry out the cancellation of the insurance (p. 47). The SC overturned the decisions of the district court and the high court that ruled in favor of the insured and decided to grant the insurer's request. The SC also ordered the insured to pay costs related to the proceedings at all levels of court (p. 60).

Table 2.
The SC Decision on the Application of Utmost Good Faith.

Case Number and Disputing Parties	Insurer's Argument	The SC's Judgment
No. 1420 K/Pdt/2015 Dahlan Sinambela v. PT AXA Mandiri Financial Services	The insured did not comply with Article 251 of CLC because he did not fill out the form correctly and honestly, and did not mention that he had previously been hospitalized.	The SC rejected the insured's application and ruled in favor of the insurer.
No. 1987 K/Pdt/2011 PT Asuransi Recapital v. Zainudin Anshori	The insured committed misrepresentation by stating a date for the ship's departure that is different from the actual departure date, thereby violating the principle of utmost good faith in Article 251 of CLC.	The SC ruled in favor of the insurer and overturned the high court's decision.
No. 1935 K/Pdt/2012 PT Asuransi Harta Aman Pratama v. PT Pelayaran Manalagi	The insured has violated Article 251 of CLC because the insured did not mention the dangerous goods being transported, and the quantity transported exceeded the agreed quantity.	The SC accepted the insurance company's application and overturned the district court and high court decisions that had ruled in favor of the insured.

Source: Derived from the SC Case Directory.

To avoid unfavourable rulings by the Indonesian legal authorities, another way of resolving disputes is through alternative dispute resolution outside the court. This is in line with the OJK provisions that parties entering into an insurance agreement (policy) are required to include a clause containing the procedure for resolving insurance disputes between the insurer and the insured [46]. However, the OJK requires those who have disputes in the insurance sector to use an institution established by the OJK, namely the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK) [47].

3.4. Implications of the CC Decision for the UGF Principle

On January 3, 2025, the CC announced a landmark decision, which states Article 251 of CLC is conditionally unconstitutional [48]. This means that, conditionally, the article is deemed unconstitutional and does not have legal force. In other words, it may only have legal force if the article is interpreted in accordance with the conditions determined by the CC. The verdict determines that the incomplete disclosure of information by the insured is not necessarily a legal reason for insurance companies to reject claims or cancel the policy. The consequence of this verdict is that Article 251 of the CLC, which has often been used by insurance companies to reject insured claims, cannot be enforced unconditionally without regard to other significant legal principles, such as the principle of justice and consumer protection.

The CC decision was triggered by the case of an heir named Maribati Duha, the beneficiary of insurance on behalf of the deceased Sopan Duha, who submitted a request for material testing of Article 251 of ICLC concerning the Constitution. The applicant considers Article 251 of CLC to be a double-edged sword: on one hand, this article protects the insurance company from unauthorized claims, but on the other hand, it is considered to be used to reject the heirs who should have the right [48].

The CC does not agree with the request of Maribati Duha in its entirety and emphasizes that utmost good faith in insurance agreements is indeed essential and should be treated as an instrument for both the insurer and the insured to obtain legal protection when entering into insurance agreements. Eventually, the CC has made the following decisions [48].

1. Grant the Applicant's request in part.
2. Declares the norm of Article 251 of ICLC unconstitutional and lack of legal force unless interpreted as: "the cancellation of coverage must be based on the agreement of both the insurer and the insured, or based on a court decision".

The CC decision clearly addressed that insurers should not deny insurance claims solely for administrative reasons and incomplete disclosure of information from customers. In other words, rejection can only occur if the incomplete information is proven to have a significant impact on the insured risk. This decision aligns with the principle of justice, considering that the position of the insured often lacks knowledge compared to that of the insurance company. Nevertheless, the party that assumes the risk replacement must also be given protection. This is important because insurance agreements are unique contracts based on uncertain events in the future. Therefore, the insurer also needs to be protected from the possibility of abuse of circumstances or traps due to imbalanced information and the agreed risk factors.

The CC's decision has a major impact on both customers and insurance companies. Below is Table 3, a description of the implications of the CC's decision not only for the insurer and the insured, but also for other stakeholders.

Table 3.
Implications of the CC Decision Number 83/PUU-XXII/2024.

Parties Affected	Before the CC Decision No. 83/PUU-XXII/2024	After the CC Decision No. 83/PUU-XXII/2024
Insurance Company (Insurer)	1. The underwriting process was treated as more of a formality, without actually carrying out in-depth study. 2. Unilateral cancellation by referring to Article 251 of CLC.	1. There is an increase in business processes, underwriting is carried out with in-depth risk analysis. 2. Cancellation based on agreement of the parties or through a court decision.
Insured	1. Honesty required when filling out an application, which may result in unilateral cancellation. 2. Not protected fairly and equally in the insurance creation process.	1. Honesty in insurance applications with the risk of losing in court. 2. Provided with better, fairer and more transparent protection.
Agent/Broker	1. Lack of proactiveness in bridging the gap between the insurer and the insured. 2. Not a big role in the insurance agreement process and its implementation.	1. Become a consultant to the insured and provider of information for insurer. 2. Ensure that the parties' obligations and rights are met in a balanced manner.
Other potentials	1. Insurance disputes are relatively few, the insurer can cancel unilaterally referring to Article 251 of CLC. 2. The Insurance Association does not interact much, assuming that all provisions are clear and members and insurance companies understand them.	1. Insurance disputes have the potential to increase; the insured will sue in court if the claim is not paid. 2. The Insurance Association needs to socialize the new provisions to members and insurers, and encourage the OJK to issue implementing regulations.

Source: Processed from Multiple References.

Article 251 of the CLC has become outdated and fails to align with current circumstances, especially concerning consumer protection. The provision does not outline a clear and transparent process for unilateral cancellations by insurers. It creates uncertainty and significant ambiguity in how such actions are implemented, and this uncertainty is often exploited by insurers for their benefit. It runs against the fundamental principles of protection, justice, and equality.

4. Conclusion

The term "UGF" in Indonesian refers to having good intentions and exercising due care. It encourages parties to resolve differences with truth and fairness. Insurance contracts are described as contracts uberrima fidei, meaning a contract based on "UGF". This concept serves as an essential foundation of insurance law, playing a crucial role in the relationship between the insurer and the insured as stipulated in Article 251 of the CLC. Nevertheless, it tends to favor the insurer, as the insured is generally responsible for making all necessary disclosures. For insurers, they bear minimal responsibility beyond the requirement to ask relevant questions. For the insured, all pertinent data must be revealed, as any omission of material facts can lead to denial of benefits by the insurer, whether intentional or unintentional, even when their negligence is committed in good faith. Ultimately, the unilateral cancellation of insurance policies can risk infringing upon the rights of the insured.

In light of these concerns, the CC's decision No. 83/PUU-XXII/2024 ruling that Article 251 of CLC is conditionally unconstitutional is necessary to uphold the actual intention of the principle of UGF. This decision ensures that justice and fairness are maintained, reflecting the rights of all parties involved. Therefore, a more transparent and accountable process should be established to prevent any unfavorable consequences as a result of unilateral actions of insurers. The consequence of this verdict is that Article 251 of CLC, which has often been used by insurance companies to reject insured claims, cannot be enforced unconditionally without regard to other significant legal principles, such as the principle of justice and consumer protection.

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