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Liability of Insurance Companies for Unfair Terms in Iranian Law*

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Abstract
Insurance has developed into a vast industry, so insurance companies seek to maximize profit. Therefore, they tend to formulate the insurance contracts in such a way that infringes on the insured's rights. They strive to secure additional privileges and profit by incorporating unfair terms in insurance contracts. Lawyers suggest that the solution to preventing the inclusion of such words and ensuring fair treatment of the insured lies in the insurers' pre-contractual duties, such as their obligation not to include such unfair terms. Based on the fairness principle in Iranian law, one can articulate this obligation for both parties in all contracts. In conclusion, in insurance contracts, the general contract terms obligate the insurer to accept payment from a third party. If paying the insurance premium takes place with the permission of the insured, the third party can return to the insured for the paid amount. However, if the third party performs the payment without the insured's permission (the primary debtor), it is gratis, and the third party retains the right to return to the insured.
Keywords: Civil liability; Insurance; Unfair terms; Insurance contracts

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Kewajiban Perusahaan Asuransi untuk Ketentuan yang Tidak Adil dalam Hukum Iran

Abstrak
Saat ini, karena asuransi telah berkembang menjadi industri yang luas, perusahaan asuransi berusaha untuk memaksimalkan keuntungan. Mereka cenderung merumuskan kontrak asuransi sedemikian rupa sehingga melanggar hak tertanggung. Mereka berusaha keras untuk mendapatkan hak istimewa dan keuntungan tambahan dengan memasukkan persyaratan yang tidak adil dalam kontrak asuransi. Pengacara menyarankan bahwa solusi untuk mencegah penyertaan persyaratan tersebut dan memastikan perlakuan yang adil terhadap tertanggung terletak pada kewajiban pra-kontrak perusahaan asuransi, seperti kewajiban mereka untuk tidak memasukkan persyaratan yang tidak adil tersebut. Seseorang dapat mengartikulasikan kewajiban ini untuk kedua belah pihak dalam semua kontrak, berdasarkan prinsip keadilan dalam hukum Iran. Kesimpulannya, dalam kontrak asuransi, ketentuan kontrak umum mewajibkan perusahaan asuransi untuk menerima pembayaran dari pihak ketiga. Jika pembayaran premi asuransi dilakukan dengan izin tertanggung, pihak ketiga dapat mengembalikan kepada tertanggung sejumlah uang yang dibayarkan. Namun, jika pihak ketiga melakukan pembayaran tanpa izin tertanggung (debitur utama), itu gratis, dan pihak ketiga tetap memiliki hak untuk mengembalikan kepada tertanggung.
Kata kunci: Tanggung jawab perdata; Pertanggungan; Persyaratan yang tidak adil; Kontrak asuransi

Ответственность страховых компаний за несправедливые условия в иранском законодательстве

Абстрактный
В современном мире, где страхование превратилось в огромную отрасль, страховые компании стремятся максимизировать прибыль. Они, как правило, составляют договоры страхования таким образом, что это нарушает права страхователей. Они добиваются дополнительных привилегий и прибыли, вставляя несправедливые условия в договоры страхования. Юристы предполагают, что решение проблемы предотвращения включения таких условий и обеспечения справедливого отношения к застрахованному лежит в преддоговорных обязательствах страховщиков, таких как их обязательство не включать такие несправедливые условия. В соответствии с принципом справедливости иранского законодательства это обязательство обеих сторон может быть предусмотрено во всех контрактах. Наконец, в договорах страхования общие условия договора требуют, чтобы страховщик принимал платежи от третьих лиц. Если страховая премия уплачена с разрешения страхователя, третье лицо может вернуть страхователю уплаченную сумму. Однако, если третье лицо платит без разрешения страхователя (основного должника), это бесплатно, и третье лицо оставляет за собой право вернуть платеж страхователю.
Ключевые Слова: Гражданско-Правовая Ответственность; Страхование; Несправедливые Условия; Договоры Страхования

A. INTRODUCTION

The insurance industry's unfair terms and corresponding civil liabilities are significant subjects (Manes, 2020). The most common examples of unfair terms occur in standardized and additional contracts. Iranian law lacks the particular rule to counter such unfair terms despite their necessity. Among the most relevant topics in Iranian law, and even written law with unfair terms, are the exclusion and restriction of liability clauses (Alipour, 2012). Also, general rules of the contracts and the literature on consent and transaction purposes offer grounds for countering unfair terms. Insurance companies have violated the insured's rights in drawing up the insurance contracts, as they include unfair terms to secure special privileges for themselves (Talesh, 2016). To tackle these terms, lawyers regard the obligation not to include unfair terms as an integral part of the insurer's pre-contractual duties. Unfortunately, the insurance law and the commercial insurance bill are silent. Providing relevant information seems to be the best way to protect the insured's rights. Thus armed with the knowledge of the most recent terms, the insured can enter new agreements based on those terms with the insurer (Ross, 2017).

Furthermore, the insured in a specific branch will have similar conditions, rights, and duties. However, the Iranian legal system does not explicitly anticipate such a task. Although Iran's Supreme Insurance Council formulates the general terms of the insurance contracts that apply equally to all, the law should task the insurer with providing the insured with the information on the more specific terms they set for them without their knowledge. The Iranian legal system does not explicitly ask the insurer to prepare the pre-contractual documents. However, due to its higher specialization and information, the dominant practice consists of the insurer drafting the insurance contract and other relevant documents. Of course, the insurer might sometimes abuse this procedure, as the Iranian legal system does not specify a regulation to prevent possible abuse on the insurer's part. This study investigates the civil responsibility for unfair conditions in insurance contracts under Iranian law to provide light on the issue. In addition, it aims to present the necessary measures to address this issue.

B. METHODS

The research involved either normative or doctrinal aspects of the law. The secondary data, which come from various sources, including books, verdicts, journals, and other theoretical references, will be elaborated using this strategy.

In addition, it will examine the fundamentals of various privatization issues from the point of view of the Indonesian legal system. This study aims to investigate the decisions made by two Constitutional Courts regarding the privatization of the electrical industry. As the primary commentaries on the constitution, their rulings carry a lot of weight and are essential. On the other hand, the Job Creation Act, the new legal policy that updated the rule of law surrounding electricity, is highly vital to be mentioned. This topic needs to be covered because it is pretty essential.

C. RESULTS AND DISCUSSION

1. Defining the Concepts

Generally speaking, civil liability refers to any legal obligation, whether contractual or non-contractual, requiring a party to compensate for the other party's loss. Thus, liability comprises both civil liability deriving from contracts and non-contractual civil liability predicated on the general rules (Safaei, 2014: 95).

The particular meaning of civil liability merely includes non-contractual civil liability. In Iranian law, prominent lawyers have considered the specific purpose of civil liability in their writings. With no handcuffs and shackles, the mere internal censure and rebuke suffice for everyone to live in security with no need for jails and magistrates (Bariklu, 2004: 21).

Legally speaking, insurance designates a contract where the insurer party undertakes to indemnify the insured against their damage in the event of an accident in exchange for receiving a fee from them. The obligated party is called the insurer, the obligee is named the insured, and the money that the insured pays the insurer is called the insurance premium. Moreover, the item that is guaranteed constitutes the subject matter of insurance.

Insurance comes in various shapes and forms, from social to commercial. Insurance is a contract where, in exchange for a sum, the insurer undertakes to reimburse the insured, their legal heirs, or other beneficiaries of the insurance contract for the damages they incur in the event of an accident (Sheibani, 1992: 120).

Scholars often define insurance as the act of hedging against possible risks through actuarial insurance calculations (Valinejad, 2002: 28). Insured: Insured can be a legal or natural person covered by the insurance policy in exchange for paying a specified fee or mutual assumption of obligation arising from certain

risks (Valinejad, 2002: 28). Insurer: The insurer is the party that is obliged to compensate the insured for losses from specific contingencies in exchange for a fee or assumption of obligations.

A certificate of insurance (COI) is a document summarizing the insurance contract's conditions that indicate the existence of an insurance contract. Although the term certificate of insurance is sometimes used interchangeably with the term insurance contract, they are not the same. The COI, in a nutshell, proves the insurance contract (Valinejad, op. cit.: 29).

Insurance premium: The insurance premium is the amount the insured pays to the insurer in exchange for the insurer's obligation to compensate for the insured's loss. In other words, it represents the price of risk.

Subject Matter of the insurance: The subject matter of insurance is what is covered by the insurance policy. Every insurance contract needs subject matter that may take property or individuals. Although the term subject matter points to property insurance, the health and life of a person can also be the subject matter of the insurance. Strictly speaking, the subject matter of insurance is the risk of incurring a loss. In other words, the subject matter of the insurance is a risk or event that happens to an individual or property.

An unfair term is a term that, even though binding according to the general rules of the contract and the freedom of contract principle, is unjust, as it does not flow from the free will of the obligee. Instead, the other party has abused their privileged position to impose it. In other words, a term is unfair when one party sets it due to the other party's disadvantaged position and contrary to their will and gives the more powerful party special privileges that disrupt the balance between the parties to the contract (Skini, 2007: 6).

2. Types of Unfair Terms in Insurance Contracts

This section goes over the items seen in insurance contracts that are among unfair terms:

1. The terms that mislead the insured. This category encompasses the terms with which the insured does not have sufficient time to familiarize themselves before signing the contract, for instance, when there is copious fine print and appendix, and the insured does not get the opportunity to peruse all the provisions. It also contains terms that limit the insured's obligations regarding their representatives' responsibilities (Dadkhah, 2010: 4).

2. The terms that cause a significant imbalance in the obligations of the parties, such as the terms that inappropriately limit the insured's legal rights or the words that bind the insured to implement the contract in the face of partial default on the insurer's part.
3. The terms that impede the compensation of the insured's loss. This category includes terms that deprive the insured of the right to take legal action or any other legal restitution. Also are the terms that enable the insurer to put forward illogical and unreasonable requests in exchange for the compensation claim. For instance, creating limitations on when the insured can legally declare the accident (Dadkhah, op. cit.: 5).
4. Another instance is the terms enabling the insurer to terminate the contract when this right is not legally recognized.
5. Another example is the terms that allow the insurer to retain the insured's fees for the services not yet provided in the event of dissolution of the contract.
6. Another category is the terms that give the insurer the right to terminate the contract without legal justification. In other words, the terms provide the insurer with the right to terminate the agreement for an unspecified time and absent regular notifications based on no substantive reasons.
7. Other such terms are those that enable the insurer to unilaterally and without justification terminate the contract, e.g., the terms that give the insurer the right to create insurance premiums during the coverage period.
8. The terms task the insured with paying a substantial amount of money as a penalty in case they breach the contract.
9. Some commercial contracts contain terms stating that if one of the parties were to refuse to do what the contract dictates or commits an act prohibited by the agreement, they must pay a sum specified in the contract as a fine to the other party. This provision is called the criminal provision in comparative law. Article 719 of Iran's Civil Procedure Code and article 34 of the Registration Law refer to it as the requirement aspect [Vajh-e Eltezam]. From the fifteenth century onwards, courts of justice announced the void of the provision where the debtor undertook to pay much more money as a penalty in case of default. Indeed, the courts of justice disregarded the penal provision whenever there was fraud on the creditor's part or when they saw the delay in payment was through no debtor's fault. Instead, they determined the actual damages and sentenced the debtor to pay them. Later in the eighteenth century, any penal provision was declared void if it had a corrective function or was thought unreasonable (Skini, 2001: 21).

10. The terms that exclusively enable the insurer to interpret the contract's provisions.

3. Consequences of Inclusion of Unfair Terms in Insurance of Contracts

Article 20 of chapter 2 lays out the principles of trade contracts. Each condition mentioned in standard agreements will not be binding if the other party does not normally expect it unless they unequivocally accept it. To determine whether or not a condition qualifies as such, one needs to pay attention to the condition's content, language, and formulation. Suppose, for instance, A is an insurance company in country X. A is a subsidiary of company B registered in country Y. The A's standard terms and conditions encompass almost 50 companies in the fine print. These terms specify that the Y country's law is applicable. Since customers in country X typically do not expect that the standard contracts of the company in their country determine a foreign direction as relevant to their agreement, the terms and conditions will be null and void if they are not presented in large print or in some other appropriate manner that would attract the attention of the accepting party. (Alizadeh, 2005: 95)

English and American law adopt an almost identical approach in dealing with the unfair terms in standard contracts, especially when the other party is a consumer. The courts have attempted to ascertain whether the parties have consented to the terms in both countries. They have also endeavoured to determine whether the contract includes the said terms. As a result, courts have dismissed many unexpected and unfair terms in standard contracts. In cases where the said terms form a part of the contract, the courts have ruled them inequitable and biased and have revoked or modified them.

In English law, dismissing or modifying the biased and unfair terms in standard contracts primarily relies on the positive direction and the instructions of the Council of the European Union.

The Islamic legal system lacks a general rule regarding unfair contracts. However, in Islamic jurisprudence, the freedom of contract principle governs the contracts as a general rule and applies unless in exceptional cases and according to the religious scriptures (Qanavati, 2010: 154).

On the other hand, there is the Terms Rule (the hadith uttering that the believers must buy their Terms or in Arabic: Al-Momenoun Enda Shorutehom). This hadith enjoys such high credibility and validity that Islamic jurists invoke it as a jurisprudential rule. "Al-Momenoun" (the Arabic word for believers) implies

universality. The word Enda (by) is an adverb of place in Arabic and cannot play the role of the subject by itself and requires another word to make sense, which here is the word Sabetun. Therefore, the hadith means the believers abide by their terms. Also, the word "Shorut" (phrase) is plural and suggests universality. The criterion in interpreting this hadith is the conventional understanding, as the apparent meaning is valid for rational people, and the word's appearance is its traditional meaning. Since religion addresses convention, the word's conventional meaning is accurate. One can infer from the traditional use of the word and the syntax and the principle sciences, where some use the word "Shart" to designate pledge and commitment.

In contrast, others use it to mean relationship and suspension. All the meanings of the word Shart can be reduced to one definition, as pledge and commitment imply dependence and relationship. When someone pledges and commits to something, they depend on it and undertake to perform it. Therefore, the hadith mentioned above means every Muslim must fulfil their commitments, obligations, and terms and fulfil them.

On the other hand, insurance contracts entailing unfair terms can be an example of an abuse of urgency. Suppose, for instance, the insurer holds the monopoly over the insurance services through ill will, or at least the insurers act in harmony and pursue the same policy. Suppose further that the insured is forced to negotiate an insurance deal with a limited number of insurers due to the urgency of the insurance services, and the insurer imposes unjust and unfair terms upon them. Such circumstances constitute an abuse of speed.

Iranian law does not anticipate a legal solution for abuse of urgency. Legal scholars also hold conflicting views. Some count it among the instances of reluctance and defects of consent. However, others consider it an example of the Option of Lesion (Safaei. 2014: 129). On the other hand, perhaps we can rely on article 179 of Iran's maritime law and regard it as applicable. According to this article, "every rescue and assistance contract signed danger any circumstances viewed by the court as unjust shall be revoked or modified upon the request of either party. If the court ascertains that one of the parties is too satisfied or dissatisfied with the services, it may modify or nullify the contract upon their request."

Article 46 of the Electronic Commerce Law of Iran, ratified on January 7, 2004, also confirms that unfair terms lack legal effect. This article stipulates that "the use of contractual conditions that contradict the regulations of this section and the application of unfair conditions that disadvantage consumer shall not be effective." After discussing the insurance contract's general concepts and

exclusive conditions, we will examine its consequences in this chapter. The insurance contract generates several rights and responsibilities like any other contract. The parties are obliged to honour those rights and responsibilities, and there will be sanctions if they do not.

4. The Insurer's Obligations

According to the insurance contract principles discussed in chapter 2, the insurer has duties as a party to the contract. Fulfilling these duties and responsibilities signals the insurer's good faith in the insurance contract. The insurer's obligation is not limited to the period of implementing the contract. Based on this contract's requirements, the insurer has some duties before signing the contract to its implementation and after its dissolution. In what follows, the study will explore these obligations in two categories: the pre-contractual and post-contractual obligations that further divide into commitments before and after the event.

5. Pre-contractual Obligations

The doctrine of utmost good faith is one of the insurance contract's fundamental principles. This principle generates duties and responsibilities for the insurer even before signing the contract. A fraudulent breach of duty invalidates the insurance contract. However, the insurer enjoys the right to nullify the contract. Additionally, the insurer can choose between contract modification, rescission, and termination. Enabling the insurer to annul the agreement as a sanction against the fraudulent breach of duty contrary to the requirements of good faith illustrates that such a breach carries much more weight than ordinary breaches without bad faith.

6. Post-contractual Obligations

Having discussed the insurer's pre-contractual obligations, we now turn to its obligations after signing the contract we designate as the post-contractual obligations. The post-contractual responsibilities can be further categorized into two groups: the obligations arising before and after the event. Below, we will point to some of these obligations: a). Obligations before the insurance event; b). Paying the insurance premium; c). Paying the insurance premium as the

condition for signing the contract or starting the coverage; d). Paying the insurance premium by a third party.

7. Notice regarding the Increase in Risk

Article 16 of the insurance law puts forward the insurer's duty to declare the risk increase in Iran's legal system. Article 16 of the insurance law stipulates that "whenever the insured intensifies the risk covered by the insurance or changes one of the features or attributes of the insurance subject in a way that the insurer would not have signed the contract under such terms, they must immediately notify the insurer. Moreover, if the risk intensifies due to the insured's action, the latter must notify the insurer within ten days after they realize."

According to article 15 of the Insurance Law of Iran, the insured is obliged to take care of the insurance subject the way everyone usually tends to their property. Although the insurance contract seeks to establish security and peace of mind, signing the agreement does not eliminate the insured's need to perform the action logically required to protect their property. They must complete the same protections they did with no insurance coverage (Al-e Sheikh, 2005: 99). The insured's obligations extend after the insurance event takes place. Contrary to the notion that only the insurer is obligated to compensate for the loss after the insurance event occurs, the insured, too, has a series of duties discussed here.

8. The Duty to Reduce the Loss

Article 15 of the Insurance Law specifies the insured's duty to reduce the loss. By drawing on the loss reduction rule, this duty means that the aggrieved party needs not passively accept the loss. Instead, they must carry out everything necessary to ensure loss reduction.

In Iranian law, the causation relation is the primary foundation for the loss reduction rule. Thus, the insured's obligation to reduce loss, as the aggrieved party's non-fulfilment of the ordinary tasks to minimize loss severs the causation relationship between the loss agent and the loss. Furthermore, because the insurer cannot customarily anticipate the reducible and preventable loss, this task can also draw on the loss predictability theory.

Article 15 of the Insurance Law of Iran requires the insured to notify the insurer as soon as possible and within five days after they become aware of the event. Notifying the insurer of the event enables them to undertake immediate

measures, such as loss reduction, extensive discovery, investigation of the loss, paying compensation, and identifying the individuals responsible for the damage. As a result, the settlement will reduce. Nonetheless, in Iran's legal system, the sanction for the breach of this duty consists of absolving the insurer of responsibility. Furthermore, unlike the Principles of European Insurance Contract Law (PEICL), which requires the insurer to prove damage due to the notification delay, according to article 15 of the Insurance Law of Iran, the insured can only enjoy the insurance coverage if they prove that their hold has been due to extraordinary circumstances beyond their control and force majeure.

9. Cooperation with the Insurer after the Event

Iran's Insurance Law does not explicitly specify a cooperation duty. However, the insured must cooperate with the insurer to recuperate the loss. For instance, they must provide the insurer with the necessary evidence and documents. Section 10 of article 7 of the by-law number 39 concerning the civil liability of transportation incumbents requires the insured to provide the insurer with documents on the transported goods, such as the report of law enforcement officers at the event scene, along with any other evidence helping to ascertain the insured's responsibility or the extent of the loss (Sadeqi Moqadam and Sholuhizadeh, 2013: 23). Like the insured, the insurer has a set of duties and responsibilities. Some of these responsibilities relate to the period before signing the contract, while some pertain to afterwards. The following sections discuss these two categories in turn.

10. The Pre-contractual Obligations

The insurer has a series of pre-contractual obligations from the principle of good faith. Just like the insured must inform the insurer about the insurance subject's risk at the time of negotiation and conclusion of the contract, the insurer is also obligated to warn the insured concerning the insurance coverage. At this stage, one of the insurer's paramount duties is formulating the contract's documents. Below is a list of some of these duties: a). Preparing the pre-contractual documents; b). Providing notice regarding the inconsistencies in the insurance coverage; c). Providing information regarding the beginning time of the insurance coverage.

11. Post-contractual obligations

After concluding the contract, the insurer assumes a set of obligations. We will study these obligations in two phases: before and after the insurance event. After completing the contract and before the insurance event, the insurer has two primary responsibilities: one is to notify, and the other is to modify the insurance premium. After the insurance event, the insurer takes on its chief obligation, .ie., compensating for the loss and settling the insured's claims. Contrary to the conception that the insurer's obligations begin after the insurance event, the insurer also has specific commitments before the event. i.e., notifying and modifying the insurance premium in the event of risk reduction_ a point we will return to in detail later.

12. The Obligation to Notify

Since the insured requires access to the insurer to fulfil some of its obligations, such as giving notice about the risk increase or demanding the insurer to perform their duties in case the insured event happens, the obligation to report these changes falls with the insurer. Iran's legal system categorically anticipates such an obligation. Although Iran's Supreme Insurance Council usually formulates the general terms of the insurance contracts that apply equally to all, the law should task the insurer with providing the insured with the information on the more specific terms they set for them without their knowledge.

Article 4 of the PEICL 301 specifies the obligation to modify the insurance premium resulting from the risk decrease. This article applies to cases where an insurance subject's risk decreases fundamentally and significantly, possibly due to the actions taken by the insured, a third party, or other factors. However, it bears mentioning that a risk decrease does not refer to a reduction due to the cautionary measures agreed upon in the contract. The insured deserves an insurance premium reduction if it voluntarily reduces the insurance subject's risk.

With some simplification, one can argue that article 4 of the PEICL 301 can also include cases where the insured wrongly assumes that the insurance subject and, thus, the insurance subject is high. For instance, someone might have bought an expensive car and paid a sum for its theft insurance. After a while, they realize that the vehicle has an advanced anti-theft system, significantly reducing the theft risk. In such circumstances, the insured can ask the insurer to modify the insurance premium proportionate to the risk decrease. The insured's demand to

reduce the insurance premium applies beginning on the demand date and for the contract's remaining period. Its provisions will be valid if the insurance contract entails a relevant condition. Finally, suppose the parties to the contract reach an agreement regarding the insurance premium modification within a month of the insured's request. In that case, the insured has the right to annul the insurance contract by sending a written note. Unfortunately, Iran's Insurance Law pays disregards and remains silent on the issue of risk decrease. This neglect benefits the insurer due to its effect on the insurance premium reduction. Only article 17 of the general conditions of casualty insurance regards the insurance risk reduction and the insurer's disagreement to modify the insurance premium as one of the circumstances where the insured can terminate the contract (Hadipur, 2011: 183).

13. The Insurer's Obligations after the Insurance Event

After the insurance event occurs and the insured suffers damage, the insurer's chief obligation, i.e., compensating for the loss, comes to the fore. Determining the time of fulfilling this obligation and delaying its implementation lead to consequences, which we discuss below.

According to article 19 of Iran's Insurance Law, "the insurer's obligation consists of the difference between the insured property's price immediately before and after the insurance event takes place. The compensation shall be paid in cash unless the insurance document recognizes the insurer's right to repair or replace the property. If so, the insurer must repair or replace the insurance subject and deliver it within a socially accepted time frame. In any case, the insurer's maximum obligation shall not exceed the insured amount." As can be seen, the insured cannot expect to profit through the insurance contract, meaning that they are only entitled to loss compensation and return to their original state. If, after covering the loss, the insured is left with a profit, these conditions contradict the insurance's nature and spirit (Nokumi, 2014: 184).

As for the compensation payment method, it must, as a rule, be paid in cash and in the same currency as the insurance premium. However, the parties to the contract may agree otherwise. For example, the compensation might be in repairing or replacing the damaged property, wherein the insured can require the insurer to pay in cash (Nokumi, 2014: 185).

14. The Payment Time and the Consequences of its Delay

Irans Insurance Law does not contain a general rule regarding the insurer's delay in paying the compensation. However, article 33 of the Third Party Compulsory Insurance, ratified in 2016, sets forth that if the insurer or the fund defaults on the obligation specified in article 31 of this law and delays paying the compensation or fails to carry out the duty laid out in article 32, they shall be subject to a penalty equivalent to half per mille for each day of delay to the aggrieved party or their representative. The PEICL anticipates various sanctions for the insurer and insured breach of duties. This section examines each embargo and its breach of duty applying to it.

15. Reduction of the Insurer's Obligation

One of the sanctions specified in the PEICL document is the reduction of the insurer's obligation and, thus, the reduction in compensation. This sanction applies when the insured refuses to fulfil some contractual obligations. For instance, article 6 of the PEICL 101 concerning the notice regarding the insurance event anticipates the reduction of the insurer's responsibility. This article obliges the insured or other beneficiaries to notify the insurer of the occurrence insurance event. However, suppose they were aware of the insurance coverage and the occurrence of the insurance event and still failed to fulfil this obligation. In that case, the insurer shall be entitled to reduce the compensation proportionate to the extent that the damage resulted from the delay. However, the burden of proof falls upon the insurer.

Another commitment of the insured whose violation reduces the insurer's obligation is cooperating with the insurer after the insurance event. According to article 6 of PEICL 102, the insured or the beneficiary must cooperate with the insurer to gather information on the insurance event and provide the insurer with information concerning the causes and consequences of the event, the relevant documents, and other necessary evidence. If the insured or beneficiary violates this obligation, the compensation shall be reduced proportionately to the level that the insurer proves the damage is due to this breach of duty.

16. Absolving the Insurer of Obligation

Entirely absolving the insurer of their obligation constitutes another sanction that the PEICL document anticipates in cases where the insured

breaches some of their duties. Here, the insurer is absolved of their primary responsibility to pay compensation due to the breach's importance. Another factor absolving the insurer of their obligation relates to the insured's obligation to provide pre-contractual notice. Suppose it turns out that after the insurance event, the insured has breached their duty to pre-contractual notification and has withheld or provided inaccurate information. Suppose further that the insurer proves they would not have concluded the contract provided they possessed this information. In that case, the insurer shall be entirely absolved of paying the compensation.

Another obligation of the insured whose infringement absolves the insurer of responsibility concerns the provision of notification and notice regarding the insurance risk increase. For example, suppose that the insured event occurs due to the insurance risk increase of which the insured was aware or should have been aware, and the insurance coverage is expired (meaning it is imperative to terminate the insurance contract). In this case, if the insurer would not have insured this risk increase, they have no obligation to pay the insurance amount (article 4: 202, note 3 of the PEICL document).

Breach of duty to cooperate with the insurer following the occurrence of the insurance event also exempts the insurer from paying the insurance amount. However, suppose the insured disregards this duty through ill will, intentionally or unintentionally, knowing there is the possibility of loss. In that case, the insurer shall be entirely absolved of paying the insurance amount (article 6, 202, note 3 of the PEICL document).

17. Paying the Damage

Paying the damage is among the prevalent methods of recuperating the incurred loss and functions as a sanction. According to the PEICL document, if one of the parties to the contract breaches their duty and the other party suffers a loss, they are obligated to compensate the incurred damage. Article 2: 202 and 203 of the PEICL document anticipates two duties for the insurer. One is the obligation to issue notice concerning inconsistencies in insurance coverage. The other is a warning about the starting time of the insurance coverage. Therefore, the insurer must inform the insured of inconsistencies in the insurance coverage and its accurate timing (Salehi, 1992: 23).

Suppose, for instance, that someone loses their house covered by fire insurance and wrongfully regards the letters of credit inside the house as covered by this insurance. In such a case, if the insurer is aware of this mistake or should

have been aware, they must warn the insured that the insurance is under no obligation regarding the said documents in case of a fire. However, suppose the insurer defaults on its obligation to warn the insured, and the latter suffers a loss due to this breach of duty. In that case, the insurer must recuperate it unless the insurer is not to blame. The sanction for the obligation to notify regarding the start of the insurance contract is precisely the same (Salehi, ibid: 23).

18. The Right to Terminate

One of the significant and influential sanctions against breaches of contract is the right to terminate. Providing the other party with the right to terminate enables them to disregard a contract inconveniencing them. In insurance contracts, which are critical due to their risk coverage, the right to terminate plays a prominent role. When the insured fails to reach an agreement with the insurer, or when the insurer would not have concluded the contract provided they had access to specific information, the right to terminate enables the honest party to stop further loss and pursue another insurance coverage if necessary. The PEICL mentions numerous cases where the breach of duty creates a right to terminate for the other party to the contract. For example, when the insured breaches their obligation to pre-contractual notification and points this becomes clear for the insurer before the insured event takes place, they can propose to the insured to modify the insurance premium or otherwise revoke the contract. Another case in point is when the insurer defaults on the insurance premiums. In such circumstances, the insurer has the right to terminate the agreement. Of course, one of PEICL's innovations materializes in article 5: 103, which considers the insurance contract terminated after the fixed deadline, demonstrating the significance of the insured's obligation to pay the insurance premium.

Another example is the insurance reduction discussed earlier. According to article 4 of the PEICL 301, the insured can request the insurer to reduce the insurance premium due to decreased risk. However, if the parties fail to reach an agreement within one month from the date of the request, the insured has the right to terminate the insurance contract (Al-e Sheikh, 2005: 33).

Another critical point raised by the PEICL is implementing the right to terminate. In most cases, the party seeking to assert this right must send a written notice to inform the party of their wish. Moreover, the termination is not binding upon notification except for a limited number of cases, such as the intentional breach of duty to notify about the intensified risk, for which the termination becomes binding immediately. Instead, a specified time must pass before the

termination becomes legally enforceable. Perhaps this arrangement was motivated by the fact that if the termination becomes binding immediately, especially by the insured, the insurance risk remains uninsured until another suitable insurer is found. To protect the insured, the insurer retains their obligations since the notice is issued to the point when the termination becomes binding (Babaei, 2001: 51).

19. Discussion

The Iranian law lacks regulations, and thus definitions, for unfair terms. The contracts entailing unfair terms differ from the Compulsory Contracts where an external force (even if legal and legitimate) is lacking in their conclusion, i.e., the individual concludes the contract because of the legal, and not personal, requirements. Nevertheless, the legal systems with rules regulating the unfair terms have also defined them. For instance, in American law, terms must be against conscience to be judged as unfair. The Unfair Terms in Consumer Contracts Regulations (1999), a significant step towards countering unfair terms in Europe, defines unfair terms in article 3: "a contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties rights and obligations arising under the contract, to the detriment of the consumer." Thus, unfair terms include terms against conscience and good faith, which are excluded from the negotiations between the parties and result in an imbalance in the parties' rights and obligations. Some writers maintain that the insurer's obligation is contingent upon paying the insurance premium, without which the insurer shall have no responsibility. However, since the contracts are always assumed consensual, this rule also applies to the insurance contract. Paying the insurance premium is not a pre-condition for concluding the contract and generating obligations for the insurer. However, in such a case, the insurer will likely assume the responsibility to compensate for the insured's loss without receiving any insurance premium, and their interests become seriously endangered. Thus, the insurers take utmost care in issuing the insurance policy and refuse to administer and deliver it before receiving all or the first instalment of the insurance premium.

Insurance is a contract between two parties that becomes a document. It is determined by the insurer (monthly or annually pays an amount based on the premium to the insurer, which causes some risk to life (Cox and Lin, 2007). The other party is called the insurer (a natural person who is paid according to the contract in case of accidents and an amount to be paid to the insurance or services

provided), in exchange for a certain amount that he is entitled to. , Is transferred according to the principles of insurance (Rinaldi, 1993). Any contract that is written and follows the principles of insurance, which is known as the eight principles of insurance, which is as follows:

1. The principle of good faith and mutual trust: This principle is necessary for the performance of any contract. However, in insurance contracts, the principle of good faith is fundamental and is one of the important factors in regulating the relationship between the insurer and the insurer and must be present at all stages of the validity of the insurance policy and even before the issuance of the insurance policy. The insurer relies heavily on the information and accuracy of the insurer's actions, and if the insurer lacks good faith, there will be detrimental consequences for the insurer. Failure to provide information or concealment of the facts, whether intentionally or intentionally, will terminate the contract.
2. Principle of indemnity: When the insurer has insured the money at a higher price at the time of concluding the contract with the intention of fraud, the contract will be cancelled, and the insurance premium will not be refundable. Receiving more than the actual amount by the insurer also leads to profit, which is also not morally acceptable. By receiving more financial damages, the insurer's financial situation becomes better than before the accident, and this issue reduces the motivation to take care of the insured item and prevent the accident.

In non-life insurance, the insurer must prove the following to receive compensation:

a. Occurrence of the insured event: Prove that the insured accident has occurred. Because only in the event of an insured event is the insured that the insurer will be required to fulfil its obligation to the insured.
b. Existence of a causal relationship between the occurrence of the accident and the damage caused: The insurer must prove that there was a causal relationship between the occurrence of the accident and the damage, that is, the damage was caused by the accident subject to insurance because the insurer does not compensate any damage to the insurer but will only compensate the damage that is direct "as a result of the accident subject to insurance. In non-life insurance, the insurer must prove the following to receive compensation:
c. Occurrence of the insured event: Prove that the insured accident has occurred. Because only in the event of an insured event is the insured that the insurer will be required to fulfil its obligation to the insured.

d. Existence of a causal relationship between the occurrence of the accident and the damage caused: The insurer must prove that there was a causal relationship between the event of the accident and the injury, that is, the damage was caused by the accident subject to insurance because the insurer does not compensate any damage to the insurer but will only compensate the damage that is direct "as a result of the accident subject to insurance (Reason, 2016).

The contractual terms are the best solution for the insurer's obligation without receiving the insurance premium. The contract mentions that the insurer's obligations are contingent upon the insurance premium payment. Even in cases where the insurer's obligations begin before the insurance premium payment, a provision is included to the effect that if the insured fails to pay the insurance premium instalments according to the contract, the insurer's obligations become suspended. In Iran's legal system, the general contract rules make it possible for a third party (unobligated) to fulfil the obligation. For example, suppose the fulfilment of the obligation is not contingent upon supervision. In that case, the creditor cannot refuse to receive their debt from a third party, as the creditor has no other right than to obtain their debt, and whoever repays the debt has no bearing on the right.

D. CONCLUSION

In conclusion, the general contract terms in insurance contracts obligate the insurer to accept payment from a third party. Therefore, if paying the insurance premium takes place with the permission of the insured, the third party can return to the insured for the paid amount. However, if the third party performs the payment without the insured's permission (the primary debtor), it is gratis, and the third party retains the right to return to the insured.

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