

**LEGAL EFFECT OF BREACH OF WARRANTY IN CONSTRUCTION
INSURANCE IN MALAYSIA**

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The English insurance law underwent some changes and development with regards to breach of warranty in insurance contracts. In the UK today, once the insured breaches a continuing warranty, the insurer is simply discharged from liability as from the date of the breach of warranty but the insurance policy remains in existence. However, court decisions in Malaysia seem to suggest that a breach of warranty in construction insurance policy entitles the insurer to repudiate liability and prevents the contract of insurance from coming into existence. This misunderstanding by Malaysian courts has resulted in a legal dilemma in insurance law in Malaysia with regards to breach of warranty. Also, The Malaysian Insurance Act 1963 mainly deals with regulations of the insurance business to ensure there is proper control but the Act does not seem to have covered the matter of breach of warranty in insurance policies. Therefore, in the light of the current developments in the insurance law in the United Kingdom, this research project examined the legal effect of breach of warranty in insurance contracts in Malaysia. In doing so, the required data and information were collected from various sources which included books, articles, seminar papers, journals, Malayan Law Journal Articles, etc. It was found out that the effect of breach of a continuing warranty will result in the contract of insurance remaining in existence and the risk is being treated as having incepted at the outset but automatically coming to an end as of the date of the breach. More so, the insurer is being discharged from any future liability, although any liabilities of the insurer before the date of the breach are unaffected.

ABSTRAK

Perundangan insuran Inggeris telah melalui perubahan dan perkembangan berkaitan kemungkiran jaminan dalam kontrak insuran. Pada masa sekarang di UK, sekiranya pemegang insuran memungkiri suatu jaminan yang berterusan, syarikat insuran itu akan dikecualikan daripada liabiliti atau tanggungjawab dari tarikh kemungkiran jaminan. Walaupun begitu, polisi insuran tetap wujud. Namun demikian, keputusan mahkamah di Malaysia mencadangkan bahawa kemungkiran jaminan dalam polisi insuran pembinaan membolehkan syarikat insuran membatalkan atau menafikan liabiliti, dan mengelakkan kewujudan kontrak insuran. Salah faham oleh mahkamah Malaysia telah menyebabkan dilema dalam perundangan insuran di Malaysia tentang kemungkiran jaminan. Selain itu, Akta Insuran Malaysia 1963 lebih menyentuh tentang aspek peraturan perniagaan insuran untuk memastikan pengawalan yang tetap. Walaupun begitu, akta tersebut tidak meliputi perkara berkaitan dengan kemungkiran jaminan dalam polisi insuran. Maka, dengan perkembangan perundangan insuran di United Kingdom, penyelidikan ini dijalankan untuk memastikan kesan perundangan kemungkiran jaminan dalam kontrak insuran di Malaysia. Data dan maklumat diperoleh daripada pelbagai sumber termasuk buku, artikel, kertas persidangan, jurnal, artikel *Malayan Law Journal* dan sebagainya. Keputusan penyelidikan menunjukkan bahawa kesan kemungkiran jaminan berterusan akan wujud dalam kontrak insuran dan risiko kemungkiran ini dianggap telah dirangkumi pada awal kontrak dan akan tamat berdasarkan tempoh masa kemungkiran. Tambahan pula, syarikat insuran telah dikecualikan daripada liabiliti masa depan walaupun sebarang liabiliti sebelum tempoh masa kemungkiran tidak dipengaruhi.