



LEGAL PROTECTION AND LEGAL RESPONSIBILITY OF UNIT LINK LIFE INSURANCE AGREEMENTS

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ABSTRACT

Along with the progress of modern industry and the economy, the development of business in the insurance sector is increasingly having a positive impact. The concept of insurance activity gave birth to many large industrial companies engaged in the insurance business and expanded to various types of risk coverage and products, one of which is life insurance. Apart from being an instrument that acts as a risk bearer, the insurance industry also plays an important role in the development of the Indonesian economy. One of its functions is to act as a financial planner. To meet the needs of the community, the life insurance industry in Indonesia has developed its products into investment-linked insurance or currently known as unit-linked products. Unit link products can provide solutions that suit the needs of society, thereby enabling consumers to obtain various benefits, namely protection and investment. It is not uncommon in practice to find various discrepancies with legal norms, both from the client's and the company's point of view. This study discusses the form of legal protection for unit link insurance insureds at life insurance companies with Wanaartha and to know and understand the position of insurance companies in carrying out unit link insurance activities according to applicable regulations.

Keywords: Unit Link, Legal Protection, Liability, Insurance

INTRODUCTION

Modern insurance started to emerge in Europe as a means of securing a prosperous living after the industrial revolution in the middle of the 19th century. On the other hand, home risk rises in the industrial world. The expansion of the transportation infrastructure has enhanced traveler mobility within regions as well as to foreign countries. The demand for security of cargo and passenger life is growing along with the threat of transportation hazards. In order for groups of capital units to emerge in the form of joint ventures, rapid trade between nations has fostered the formation of diverse trading firms in various industries. Due to the growth of industry,

uncertainty in life is the precursor of associations that seek to bear shared risks. Members of the association agree to collect donations of money to be distributed whenever one of their number encounters a risk. A risk acceptance clause is included in all agreements made by association members.¹

The expansion of business in the insurance sector is having an increasingly positive impact on modern industry, economy, and society. Many significant industrial businesses active in the insurance business were founded on the idea of insurance activity, which later broadened to include a variety of risk coverage and products, including life insurance. Following the success of the Dutch in their colony's plantation and trade businesses, insurance company activities were introduced to the archipelago. Only after the Republic of Indonesia gained its independence did the government nationalize a number of insurance firms and publish Law No. 2 of 1992 concerning Insurance Business, which for the first time regulated the insurance industry as a whole. The Dutch-introduced Codification of Civil Law and Commercial Law, which is governed by its derivative law and supports the growth of insurance activities, is the foundation of insurance law in Indonesia.²

The insurance sector is crucial to the expansion of the Indonesian economy in addition to serving as a risk-bearing instrument. Its role as a financial planner is one of its responsibilities. The Indonesian life insurance market has transformed its offerings into investment-linked insurance, also referred to as unit-linked plans, to better serve the needs of the local population. Unit link products can offer solutions that address societal demands, allowing customers to gain a range of advantages, including investment and protection. Unit linked life insurance technically still needs regular premium payments, just like other types of insurance. The unit-linked life insurance, on the other hand, is divided into two portions after the premium is paid: a particular section for protection benefits and a section for investment units. Protection premiums serve the same purpose as premiums for regular or traditional insurance, i.e., as a fund established to cover claims for customers' unpredictable experiences. The insurance company will deposit the investment portion with the investment manager, who will manage it through the management of equity participation instruments such as bonds, money market funds, mutual funds, and so forth. In the case of some products, the client may choose not to pay the premium in accordance with the terms of the insurance policy if the investment's future returns can cover the cost of the premium.³

Although unit-linked insurance has been popular and growing in Indonesia for a while, this product really really came into existence after Law Number 2 of 1992 concerning Insurance Business was passed, and unit-linked insurance is obviously not specifically included in this legislation. As a result, Law Number 2 of 1992 is increasingly regarded as being unable to support the expansion of the insurance industry in Indonesia. Then a draft of law that more

¹Christine Magdalena Kurniasih Sena and Suherman Suherman, "Tanggung Jawab Hukum Perjanjian Asuransi Jiwa Unit Link Di PT. Prudential Life Assurance Jakarta," *Wajah Hukum*, 2021, <https://doi.org/10.33087/wjh.v5i1.342>.

²Wetria Fauzi, *Hukum Asuransi Di Indonesia, Hukum Asuransi Di Indonesia*, 2019.

³Melan Susanti, "Analisa Penjualan Produk Asuransi Jiwa Unitlink Bancassurance PT Commonwelath Life Dengan Metode Algoritma Apriori," *Jurnal Infortech*, 2020, <https://doi.org/10.31294/infortech.v1i2.7131>.

thoroughly governs non-traditional insurance products, particularly unit link products, was prepared. Law Number 40 of 2014 Concerning Insurance (UU Insurance) was released toward the end of 2014 to replace the outdated provisions due to the numerous discrepancies and shortcomings of the earlier legislation, which necessitated a special discussion of new insurance products that would undoubtedly have an impact on life insurance products. theoretical and applied unit connection⁴

Both insurance firms and policyholders, who undoubtedly seek personal advantage, can bring cases of bad faith in insurance. In contrast to the Utmost Good Faith Principle (Article 1338 of the Civil Code), which emphasizes how crucial it is to have the principle of good faith in an agreement, what is meant by poor faith is not discussed in the articles that discuss this issue. According to the principle of Utmost Good Faith, the insured has a duty to disclose all material information regarding the item to be covered as completely and clearly as feasible. This is in line with the Civil Code's declaration in Article 1320 about the legal provisions of an agreement. One of the legal criteria of an agreement is that there be some connection between the agreement's contents that the parties concerned have created.⁵

There was a case of insurance business fraud against customers in this recent occurrence. PT Asuransi Jiwa Adisarana WanaArtha is the insurance provider, and its address is Graha WanaArtha Jalan Mampang Raya No. 76 South Jakarta. WanaArtha Life's inability to achieve the solvency ratio (risk-based capital) established by OJK in compliance with applicable requirements led to the termination of this business license. This is due to the company's inability to raise the necessary funds from controlling owners or outside investors to make up the difference between liabilities and assets.

The large gap between liabilities and assets is the result of losses that have accumulated as a result of the sale of goods that resemble savings plans. WanaArtha Life offers fixed-return products, but the company's capacity to generate profits from managing its investments does not match those returns.

The 2019 audited financial report's findings indicate that WanaArtha Life's commitments, which total Rp. 3.7 trillion, are still in line with normal circumstances. Its assets totaled IDR 4.71 trillion more than its liabilities, and it had positive equity of IDR 977 billion. However, the public accounting firm claimed that certain policies were not included in the company's books when the audit was conducted in 2020. The liabilities of PT WAL (WanaArtha Life) rise to Rp. 15.84 trillion in 2020 after being taken into account in the company's financial statements, an increase of almost Rp. 12.1 trillion. Its equity was minus IDR 10.18 trillion even though its assets significantly increased to IDR 5.68 trillion. This is the last audited report, he added, and it was completed in December 2020. Liabilities are still significantly more than assets in the following financial report, which is unaudited. As a result, stockholders cannot be protected by raising further capital or finding new investors.

⁴Aria Sri Agustin, A.M Hasan Ali, and Elviza Fauzia, "Tinjauan Yuridis Pembentukan Lembaga Penjaminan Polis Asuransi Di Indonesia," *JOURNAL of LEGAL RESEARCH*, 2021, <https://doi.org/10.15408/jlr.v2i2.16602>.

⁵R Subekti and R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata (KUH Perdata)* (Jakarta: Pradnya Paramita, 2003).

Due to this circumstance, the OJK concluded that accountants, public accounting companies, and notaries were involved in indicating that the financial reports submitted to the OJK and the published financial reports of WanaArtha Life did not correspond to the actual circumstances.

The writers are interested in performing a study for a thesis journal with the heading "LEGAL PROTECTION OF UNIT LINK INSURANCE INSURED IN INSURANCE COMPANIES" based on the backdrop provided above.

Formulation of the problem:

1. What type of legal protection is provided to life insurance company unit-linked insurance insureds?
2. What role does the insurance firm play in carrying out unit link insurance operations in accordance with the relevant laws?

METHOD

Normative juridical research was used to prepare this type of study (legal research). Finding legal rules, legal principles, and legal doctrines is the process of conducting legal research. When legal research is focused on studying the application of principles or norms in positive law, the findings are already valuable. The statutory approach and the conceptual approach are the problem approaches utilized in discussing the legal issues brought up in legal research because there are many different ways to this field. It draws from a variety of sources, including Legal Materials, Non-Legal Materials, and Legal Materials Analysis.

RESULTS AND DISCUSSION

Theoretical Concept

The author first explains the theory of legal protection according to Philipus M. Hadjon before explaining legal protection for the insured in accordance with the law because it is crucial to develop legal protection in order to uphold the insured's rights and because legal protection is necessary to obtain protection under the law. Preventive legal protection encourages the government to exercise caution when making discretionary judgments, hence it has a significant impact on government acts based on freedom of action. If further defined, legal protection refers to an attempt or action to defend oneself against legal concerns. By means of the arrangements outlined in laws or other regulations, this is intended. On the basis of this comprehension, it is possible to state that the legal protection in question entails an endeavor to safeguard by written regulations or through the actions of law enforcement in upholding the law so that individuals have legal certainty.⁶

⁶Laurensius Arliman S, "Perlindungan Hukum Bagi Anak Dalam Perspektif Pancasila Dan Bela Negara," *UNIFIKASI: Jurnal Ilmu Hukum*, 2018, <https://doi.org/10.25134/unifikasi.v5i1.754>; Niru Anita Sinaga, "PENTINGNYA PERLINDUNGAN HUKUM KEKAYAAN INTELEKTUAL BAGI PEMBANGUNAN EKONOMI INDONESIA," *Jurnal Hukum Sasana*, 2020, <https://doi.org/10.31599/sasana.v6i2.385>.

Legal Protection for Unit Link Insurance Insureds at the Company

1. Law Against Unit Link Insurance Insureds at Insurance Companies According to Law Number 2 of 1999 concerning Insurance Business

The legal protection for the insured is outlined in article 2 point a and article 3 number of Law Number 2 of 1992 Concerning Insurance Enterprises, which states that the protection provided by the company to the unit link insurance insured is the same as the legal protection of the old age life insurance insured. Since unit-linked insurance is also one of the products of life insurance and is based on the provisions of Article 2 Point A and Article 3A Number 2, it will also be referred to as ordinary insurance. Examples of ordinary insurance include education life insurance and others. Law No. 2 of 1992, which relates to business insurance. By paying compensation or claims that the insured may not have saved for risk expenses in the case of illness or death if they do not transfer the risk to the insurance company, the insurance company offers protection against the risk of illness or death of the insured. Articles 11 and 15 of Law No. 2 of 1992 Concerning Insurance Businesses underline this protection as well.⁷

2. Legal Protection for Unit Link Insurance Insureds at Insurance Companies According to Law Number 8 of 1999 concerning Consumer Protection

Polis in a life insurance company, Abdul Kadir Muhammad in his book, Principles of Agreement Law, one of which discusses a lot about coverage, explains that a policy in a life insurance company is written evidence between the insurer and the insured. All terms and conditions related to rights and obligations between the two parties have been stated in the policy. The insurance company provides a form of protection to the insured by paying benefits in the amount of the investment balance agreed at the beginning of the agreement, and if the insured dies, the insurance company will pay benefits in the amount of sum insured plus investment balance when the insured dies.⁸

The insured's protection is related to legal protection, which has legal components. In addition to its tangible rights, the material that is protected also includes its abstract or fictitious substance. In other words, the legal protection provided for consumer rights under the Consumer Protection Act Number 8 of 1999 is actually the same as the protection of the insured. Given that the insured might be regarded as a customer in this situation, Law Number 8 of 1999 Concerning Consumer Protection may serve as the legal foundation for the insured's legal protection. Article 4 of Law Number 8 of 1999 Concerning Consumer Protection details the rights of the insured that the insurance firm must uphold.⁹

⁷Ahmad Zainudin, "Perlindungan Hukum Bagi Pemegang Polis Asuransi Terhadap Pencabutan Izin Usaha Asuransi," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, 2022, <https://doi.org/10.53515/qodiri.2022.19.3.808-818>; Yohanes Budi Sarwo, "Tinjauan Yuridis Terhadap Kecurangan (Frauds) Dalam Industri Asuransi Kesehatan Di Indonesia," *Jurnal Kisi Hukum Unika*, 2015.

⁸Risca Mardiana Dwi Safitri, "POLIS ASURANSI SEBAGAI HARTA WARISAN," *Repository Universitas 17 Agustus 1945 Surabaya*, 2020.

⁹Dudi Badruzaman, "PERLINDUNGAN HUKUM TERTANGGUNG DALAM PEMBAYARAN KLAIM ASURANSI JIWA," *YUSTISIA MERDEKA: Jurnal Ilmiah Hukum*, 2019, <https://doi.org/10.33319/yume.v5i2.16>.

When there are issues that are not in accordance with the contract or do not satisfy the customer, Wanartha Life Company, which in this case is the business actor, is required to accept any complaints submitted by the insured. Additionally, pursuant to Article 7 of the Consumer Protection Act and the principle of good faith, both the insured and the insurance company are entitled to legal protection.

Wanartha Life employs the good faith principle in its marketing unit connection. Following all rules pertaining to actions that are forbidden when conducting business in line with Law Number 8 of 1999 concerning Consumer Protection is one of the manifestations of good faith. Life insurance firms are subject to a number of prohibitions that apply to business actors, such as those against marketing goods that fall short of the claims made in commercials or other means of promotion.

Law Number 8 of 1999 concerning Consumer Protection also regulates dispute resolution, which is found in Article 45, as well as methods of problem-solving provided by the Wanartha Life company, which have the same meaning as the contents of Article 45 of the Law, in order to provide the insured with certainty regarding their legal protection. Concerning consumer protection, see Number 8 of 1999.¹⁰

The Wanartha Life Policy, whose legal basis is stated in Articles 2 point a, 3 point a number 2, Articles 11 paragraph 1, Article 15 paragraph 1, Law Number 2 of 1992 concerning Insurance Business, and Article 4, Article 45 of Law Number 8 of 1999 concerning Consumer Protection, contains the same form of legal protection for the unit link insurance insured at the Wanartha Life company as the legal protection for the ordinary life insurance insured.¹¹

Position of Insurance Company in Carrying Out Unit Link Insurance Activities According to Applicable Conditions

1. Position of Insurance Company in Carrying Out Unit Link Insurance Activities According to Law Number 2 of 1992 concerning Insurance Business

Utilizing insurance for Unit Link Insurance Activities As stated by Law No. 2 of 1992 Regarding the Insurance Business An insurance company is an organization that was specifically created and shaped to assume and absorb risks. As a result, insurance companies essentially provide protection services to those in need, who are then expected to become their clients. To accomplish their unique aims, insurance businesses have operational characteristics and goals that are unique to them. To face potential hazards, the business looks for clients who are willing to join it. Therefore, an insurance business is created and

¹⁰Neneng Sri Setiawati, "PERLINDUNGAN HUKUM TERHADAP PEMEGANG POLIS ASURANSI DALAM MENYELESAIKAN SENGKETA KLAIM ASURANSI," *SPEKTRUM HUKUM*, 2018, <https://doi.org/10.35973/sh.v15i1.1115>.

¹¹Wafa Nurul Inayah and Marsitiningasih Marsitiningasih, "Perlindungan Hukum Atas Kerugian Nasabah Asuransi Terhadap Kasus Gagal Bayar Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Kosmik Hukum*, 2021, <https://doi.org/10.30595/kosmikhukum.v21i2.9995>.

governed in a way that allows it to fulfill its role as an organization that assumes and accepts the risks of third parties.

The administration of an insurance company is also designed in such a way that it can handle goal-oriented business operations including making premium payments, investing in assets, and paying claims. An insurance firm, on the other hand, is a business whose product is a service. In this instance, the service is a guarantee that compensation will be given if the client ever experiences a loss brought on by an occurrence that was previously agreed upon. Protection service products are described in such depth in a deed that is typically referred to as a policy. A document used and promoted in the insurance industry that summarizes the terms of the guarantee. Every promise made in a policy that an insurance company offers as a product actually has certain financial advantages. The promised compensation or provision of recompense for actual losses constitutes the economic advantages.

Because the principle of indemnity, or the main principle in insurance agreements, underlies the working mechanism and gives direction for the goals of the insurance agreement itself, unit link insurance products place more emphasis on providing economic facilities that are in accordance with this principle. The insurance industry, in general, also has a very distinctive and wide range of activities that, in some circumstances, is quite near to the public interest, either directly or indirectly. To engender a sense of security, the insurance firm directly accepts every risk from several parties. These services must be able to satisfy market needs and demands given the insurance industry's extensive reach and the wider community's need for it.

In carrying out its operations, the Wanaartha Life company complies with Article 4 of Law Number 2 of 1992 concerning Insurance Business, specifically in point b, which states that Wanaartha Life is a company in the life insurance sector, namely health insurance, self insurance, and pension fund management, insurance products Unit Link is a part of a child life insurance product. In general, Wanaartha Life is able to engage in unit-linked insurance activities, per this article. As previously stated, unit link insurance is a subset of life insurance, and as such, Law Number 2 of 1992 concerning Insurance Business only explains Insurance Business in the fields of general insurance and life insurance. Unit linked insurance has two points of protection, namely life protection and investment fund protection, and of course the protection provided by these two points is what matters most.

The position of life insurance companies in carrying out life insurance and investment activities (unit link) is more fully described in Article 13 of Government Regulation Number 73 of 1992 concerning Conducting Insurance Business as amended by Government Regulation Number 63 of 1993. However, the position of life insurance companies in carrying out life insurance and investment activities (unit link) is not explicitly explained in Law Number 2 of 1992 concerning Insurance Business. Government Regulation Number 73 of 1992, Article 13, relating to the Conduct of Insurance Business

According to the explanation provided in this article, the majority of the money that insurance or reinsurance businesses invest comes from the general public and is connected to

the duties that the companies in question have to the insureds. The legal aspect, the level of risk, the level of profit, and the level of liquidity must therefore be taken into account when managing investments in accordance with the requirements that must be met. Therefore, the Minister decides what kinds of investments can be made, such as deposits, securities, and other financial instruments.

2. The Position of Insurance Companies in Carrying Out Unit Link Insurance Activities According to the Decree of the Minister of Finance Number 422/KMK.06/2003 Concerning the Implementation of Business of Insurance Companies and Reinsurance Companies

The creation of sub-funds for each investing strategy is a requirement for life insurance companies. Of course, it cannot be random in how the investment is carried out. The provisions of Article 21 paragraph (2) of the Decree of the Minister of Finance Number 424/KMK.06/2003 as revised by Regulation of the Minister of Finance Number 135/PMK.05/2005 must be complied with when choosing the types of assets that might be chosen to construct a sub-fund. The article explains that investments are made under government oversight and are not arbitrary or accidental. For instance, not all of them are travel-friendly. Only 20% of the cash received from clients are allowed for investments outside of Indonesia. Life insurance companies have a number of options available to them, one of which is to invest in Mutual Fund Participation Units based on net asset value. Many life insurance companies today place all or a portion of their investments in mutual fund firms. Professional Investment Managers offer advantages even though the insurance company itself has a division that manages investments.

Because this product is reliant on the performance of its sub-funds, unlike all other investment management, the quality of a unit-linked product genuinely depends on the dependability of the investment manager. The issue is that the magnitude of the assets under the Investment Manager's management affects a lot of factors in investing. Larger assets, greater diversity, and better risk management all go hand in hand. In actuality, the phrase "only pay a premium for a limited amount of time" refers to money for investment funds. Because investments are made in the money market, which is a risky part of the capital market, unit-linked investments often offer higher returns than bank instruments. individually contrasted with the bank. The unit linked life insurance policy was developed as a successful investment strategy where the value of the investment is directly correlated with the performance of the investment.

The way to relate investment value to insurance policies in general is to provide a unit value, where the total funds are managed by the life insurance company. Another way is to associate units with mutual funds. The unit value can directly represent the asset value of the fund and can fluctuate according to the performance of the investment. The Wanaarthaunit link life insurance policy contains the provisions referred to in Article 8 of the Decree of the Minister of Finance of the Republic of Indonesia Number 422.KMK.06/2006 concerning the Conduct of Insurance Company and Reinsurance Company Business, namely: The insurance policy must contain at least provisions regarding:

- a. When the coverage takes effect,
- b. Description of the promised benefits,
- c. premium payment method,
- d. Grace period for premium payments
- e. The exchange rate used for Insurance Policies in foreign currencies if the premium and benefit payments are linked to the rupiah currency,
- f. the time recognized as the receipt of premium payment,
- g. The company's policy is determined if the premium payment is made after the agreed deadline;
- h. The period when the company cannot review the validity of the insurance contract (incontestable period);
- i. Table of cash values, for Life Insurance Policies that contain cash values;
- j. Calculation of policy dividends or the like, for life insurance policies that promise policy dividends or the like;
- k. Termination of coverage, both from the insurer and from the policyholder, including the terms and causes;
- l. Terms and procedures for filing a claim, including the supporting evidence needed to submit a claim; Selection of dispute settlement place; The language used as a reference in the event of a dispute or difference of opinion, for insurance policies printed in 2 (two) languages or more.

The company's investment manager allocates premium funds to mutual funds, with the choice of mutual fund based on the sort of investment made.

- a. Specifically, money market mutual funds are a class of mutual fund that have low rates of return and low levels of risk due to the fact that their investment vehicle is the money market.
- b. Bond mutual funds specifically: Mutual fund types that have a greater rate of return and a moderate level of risk due to the investment instrument's focus on bonds and a small amount of the money market.
- c. Specifically, mixed mutual funds are a subset of mutual funds that have both high income and high risk. This mutual fund employs investment instruments in equities, bonds, money market, and a little in cash.
- d. Specifically, equity mutual funds: Since shares are the investment vehicle and only a small portion is in the money market or cash, equity mutual funds offer the best returns but also carry the largest risk.

Unit Link has used the following 5 (five) types of mutual fund investments up to this point:

- a. Investing in bonds, stocks, and the rupiah money market while maximizing returns. Link rupiah Magnaged Fund (mixed rupiah mutual funds).
- b. Link USD Magnaged Fund, which aims to increase investment funds in USD bonds, stocks, and money market.

- c. Link Equity Fund (equity mutual funds), with the goal of increasing your stock investment capital.
- d. Maximizing your investment funds in bonds or other government debt securities is the focus of the linked Fixed Income Fund (fixed income mutual funds) article.
- e. Link Rupiah Cash Fund, which aims to maximize your investment funds in liquid investments like SBI, banking deposits, or money market funds.

Bapepam-LK has issued Decree Number KEP-104/BL/2006 concerning Unit Link Products. Bapepam-LK gives permission to life insurance companies to issue unit link products, considering that unit link products are currently experiencing quite rapid development both in terms of the number of insureds and the amount of funds collected. The Unit Link Insurance Policy contains Article 19 paragraph (3) Chapter IV and Article 8 Decree of the Minister of Finance of the Republic of Indonesia Number 422. KMK.06/2003.

The Wanaartha Company's position in carrying out unit link insurance activities complies with the provisions of Article 3 paragraph (2), Article 5 paragraph (1), Article 8, Article 19 paragraph (3), and Article 21 of the Decree of the Minister of Finance No. 422/KMK.06/2003 concerning Business Conduct of Insurance Companies and Reinsurance Companies.

CONCLUSION

1. Forms of Legal Protection Against Unit Link Insurance Insureds at Insurance Companies are:
 1. According to Law Number 2 of 1992 concerning the Implementation of an insurance business, namely: It is stated in Article 2 point a and Article 3 point a number 2, Article 11 paragraph (1) and Article 15 paragraph (1).
 2. According to Law Number 8 of 1999 concerning Consumer Protection, namely: Contained in Article 4 and Article 45.
2. Position of Insurance Company in Carrying Out Unit Link Insurance Activities according to:
 1. Law Number 2 of 1992 Concerning Insurance Business, namely: It is stated in Article 4, Article 7 of Law Number 2 of 1992 concerning Insurance Business and Article 13 of Government Regulation Number 73 of 1992 concerning the Conduct of Insurance Business as amended in Government Regulation Number 63 of 1999.
 2. According to the Decree of the Minister of Finance Number 422/KMK.06/2003 concerning the Conduct of Insurance Company and Reinsurance Company Business, namely: It is stated in Article 3 paragraph (2), Article 5 paragraph (1), Article 8, Article 19 paragraph (3), and Article 21.

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