



Legal Protection in the Indonesian Insurance Industry: A Comprehensive Analysis

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<p>Article History Received: 2025-11-24 Revised: 2025-12-17 Published: 2025-12-30</p> <p>Keywords: <i>Insurance; analysis; Legal protection</i></p>	<p>The development of the insurance industry in Indonesia demands a strong and effective legal system to protect the interests of all parties, including insurance companies, insureds, and regulators. However, there are still challenges in the implementation of basic insurance legal principles, such as the principles of good faith, indemnity, subrogation, and contribution, so a comprehensive study of the theoretical foundations, regulations, and practices in the field is needed. This study aims to analyze insurance law in Indonesia comprehensively, by assessing the suitability of theory, regulation, and implementation. The method used is normative legal research, which focuses on the study of laws and regulations, legal doctrine, and case analysis to assess the application of law in practice. This study covers Law Number 40 of 2014 concerning Insurance and its implementing regulations, including the Financial Services Authority (POJK) regulations. The results show that although regulations have provided a clear legal framework, there are a number of obstacles in implementation, such as lack of understanding of the insured, complex administrative practices, and limited oversight. This study concludes that the harmonization between insurance legal principles, regulations, and practices needs to be strengthened to ensure optimal legal protection, while encouraging the operational effectiveness of the insurance industry in Indonesia.</p>

I. INTRODUCTION

The development of the insurance industry in Indonesia is accelerating in line with the complexity of modern life and the increasing need for public protection against unforeseen risks (Adi, 2025). Insurance is no longer just a financial instrument, but one of the important pillars in financial planning and risk management for individuals and organizations. The function of insurance goes beyond just spreading business risks; It also provides protection for life, health, property, and legal dependents (Tabun et al., 2023). Thus, insurance has a strategic role in ensuring economic stability and social welfare.

Theoretically, insurance was born from the human need for certainty and security in the face of life's uncertainties. In daily life, humans are always faced with uncertain risks ranging from health risks, loss of assets, to financial risks and legal liabilities that can be beneficial or

detrimental (Zuhdi et al., 2025). Although humans can work to anticipate risks, the end result remains beyond the control of the individual, so protection through insurance mechanisms becomes very important. This is in line with the view that risk is an essential part of human life which shows the limitations of human abilities compared to God Almighty.

Although the insurance potential is very large, the penetration of the insurance industry in Indonesia is still relatively low. Data from the Financial Services Authority (OJK) shows that the level of public participation in insurance products is not even and is still far from compared to countries with high levels of insurance literacy (Sari et al., 2024). This low penetration is influenced by several factors, including a lack of legal understanding of the insured's rights and obligations, public trust in insurance companies, and the complexity of claims and regulatory

procedures (Oscar, 2024). This condition shows that the existence of a clear legal framework and effective implementation is essential to ensure legal certainty and protection for all parties involved in the insurance relationship.

Legally, the insurance industry in Indonesia is regulated by Law Number 40 of 2014 concerning Insurance, along with OJK implementing regulations and policies. This regulation regulates the rights, obligations, and responsibilities of insurance companies, insureds, and third parties, so as to create a balance between commercial interests and consumer protection. However, the implementation of these regulations in practice often faces various challenges, such as claims disputes, contract interpretation, and differences in practice in the field. Therefore, a comprehensive review of insurance legal protection is relevant to understand the gap between theory, regulation, and practice, as well as to provide recommendations for improvement.

Based on this background, this study aims to analyze legal protection in the insurance industry in Indonesia as a whole. This study not only discusses the theoretical foundations and principles of insurance law, such as the principles of good faith, indemnity, subrogation, and contribution, but also evaluates the applicable regulations and their implementation in the field. This research is expected to provide a comprehensive overview of the effectiveness of Indonesia's insurance legal system, as well as develop recommendations to improve legal protection for all relevant parties, including consumers, insurance companies, and regulators.

II. RESEARCH METHODS

This research uses normative legal research methods, which focus on the study of the norms and laws and regulations that govern the insurance industry in Indonesia (Jonaedi Efendi et al., 2018). This approach is carried out by analyzing Law Number 40 of 2014 concerning Insurance, implementing regulations, and related Financial Services Authority (OJK) regulations. In addition, this research also utilizes legal doctrine and academic literature to understand the basic principles of insurance, such as the principles of

good faith, indemnity, subrogation, and contribution. The analysis was carried out systematically to evaluate the suitability between theory, regulation, and implementation of practice in the field, so as to provide a comprehensive picture of legal protection in the insurance industry in Indonesia.

III. RESULTS AND DISCUSSION

A. Basic Definitions and Concepts of Insurance Theory

Insurance is one of the financial instruments that cannot be separated from modern life. Conceptually, insurance can be understood from two main perspectives: as a legal agreement and as a risk transfer mechanism. As an agreement, insurance creates a reciprocal relationship between the insurer (insurance company) and the insured (policyholder), where the insurer is committed to providing reimbursement or compensation in the event of an uncertain event, while the insured pays premiums in return for the protection he or she receives (Adi, 2025).

Practically, insurance functions as a risk dispersion mechanism. Risk is an uncertainty that can cause losses for both individuals and the business world. In the household context, insurance covers basic risks such as death, illness, or property damage, while in the business world, insurance helps maintain operational continuity and minimize the financial impact of unexpected risks (Aliefah et al., 2024). In other words, insurance is present as a means of risk mitigation that is both preventive and protective, allowing the insured to stabilize economic conditions even when facing uncertain events.

From a legal perspective, the formal definition of insurance has been regulated in several regulations. Article 246 of the Commercial Code (KUHD) states that insurance is an agreement between the insurer and the insured to provide compensation for losses that may occur due to an uncertain event, with the payment of premiums in return. Meanwhile, Law Number 40 of 2014 concerning Insurance emphasizes the role of policyholders as insured parties and emphasizes the function of insurance as a risk transfer and the provision of financial benefits both for the life and

death of the insured. The change in the term from "insured" to "policyholder" indicates a legal adaptation to modern industry practices, which emphasize the rights of consumers and the obligations of insurance companies (Lathif & Habibaty, 2019).

The fundamental difference between insurance and gambling confirms the legal character of insurance. Although both relate to uncertain events, the possible risks in insurance can be accounted for actuarially, so premiums can be adjusted to the level of risk, while gambling is speculative with no rational basis for calculation. Insurance is not a contract of chance, as there is a clear interest, a legitimate transfer of risk, and a reciprocal of legally regulated rights and obligations (Mustika et al., 2023).

Juridically, the elements of insurance include: the insurer, the insured party or the policyholder, the written agreement in the form of a policy, the insurer's obligation to provide reimbursement, certain events on which the claim is based, and the premiums paid by the insured in return (Kansil & Sulistio, 2024). These mutual rights and obligations provide important legal certainty to protect the interests of both parties. Policies as written documents have a central role as valid evidence of the existence of an agreement, including special terms and conditions that contain rights and obligations that cannot be violated.

In addition, the law provides detailed provisions regarding the time of the agreement's validity, the formal terms of the policy, and the legal consequences if the agreement does not contain the absolute matters that are regulated. This shows that insurance is not only a financial mechanism, but also a complex legal instrument, which requires compliance with regulations in order for the insured's rights and obligations of insurers to be optimally protected.

Thus, insurance is a combination of economic theory, legal principles, and socio-economic practices. It was born out of a human need for protection against uncertainty, governed by legal norms to ensure fairness and certainty, and implemented in industrial practice to ensure the financial sustainability of individuals and

organizations. A deep understanding of these basic concepts is an important foundation for analyzing legal protections in the insurance industry more holistically, including challenges in regulation, practice implementation, and consumer protection in Indonesia.

B. Risk Theory and Risk Management

Insurance plays an important role as an important financial instrument in human life, both at the individual and organizational level. Practically, insurance functions to manage risks that can threaten economic stability, both fundamental risks such as death, illness, and loss of property, as well as risks that can interfere with business continuity or economic activities (Gravionika & Subarkah, 2025). The concept of risk in insurance does not simply refer to uncertainty, but includes the possibility of losses that require systematic and planned management.

In general, risk can be defined as a condition that contains the possibility of deviations from expectations or losses. In the context of insurance, risk has several dimensions. First, physical risk, which is a threat to physical objects such as buildings, factories, or other assets, due to natural, economic, or human factors, such as fires, earthquakes, floods, or riots. Second, personal risk, which is related to losses that directly affect humans, including death, accidents, illness, or aging. Third, liability risk, which is legal risk arising from the actions of individuals or organizations that cause losses to other parties (Purwati, 2021).

In insurance science, risks are differentiated according to the object or object of protection, namely: risk to objects, risks to humans, and risks to the hazard itself (Adi, 2025). Furthermore, the types of risks can be further categorized based on their nature and characteristics:

1. Financial and non-financial risks, i.e. risks that have an impact on financial aspects or non-financial aspects such as reputation or physical safety.
2. Static and dynamic risks. Static risks tend to occur regularly and predictably, making them easier to insure, while dynamic risks arise from economic, technological, or social

changes, which are difficult to predict and can cause significant losses to society.

3. Pure and speculative risk. Pure risk includes the possibility of real and insurable losses, while speculative risk is related to profit-loss situations such as in gambling, which cannot be insured.

In the context of life and financial insurance, the characteristics of insurable risks include:

1. The risk of death, an event that is certain to occur but the time of occurrence cannot be ascertained. Death causes loss of income and economic hardship for families or dependents.
2. The risk of old age, an event that is certain to occur and can be foreseeable, but the duration of which is unknown. Old age causes limitations in the ability to generate income.
3. Risk of accidents, uncertain but probable events, that may result in death, permanent disability, or health impairments that impact personal and family economies.

Risk management in insurance is carried out through several strategies, including (Hapsari, 2025):

1. Avoidance, which is an effort to prevent direct exposure to risks.
2. Prevention, measures that reduce the likelihood of losses.
3. Transferring risk (transfer), which is transferring the burden of risk from the insured to the insurer through an insurance agreement.
4. Accepting risk (assumption/retention), a strategy in which individuals or organizations bear the losses that may occur.

From the perspective of insurance theory, risk transfer theory is at the core of the protection mechanism (Adelia et al., 2024). The Insured is aware of the threat to life, property, or legal liability, and through insurance, the risk is transferred to the insurer. Thus, insurance not only functions as a financial instrument, but also as a legal and social instrument that provides certainty and protection, as well as allowing the insured to carry out economic and business activities more safely.

Awareness of risk management is becoming increasingly important in the context of Indonesia, where insurance literacy levels are still low, while exposure to a wide range of natural, social, and economic risks is increasing. A comprehensive approach to risk theory and risk management helps to understand how insurance principles are applied to provide optimal legal, economic, and social protection, as well as strengthen the effectiveness of the insurance industry at the national level.

C. Insurance Legal Principles

Insurance legal principles are the main foundation in ensuring that the relationship between the insurer (insurance company) and the insured (policyholder) runs fairly, transparently, and in accordance with the provisions of the law (Lathif & Habibaty, 2019). These principles not only provide legal certainty, but also ensure effective financial protection for all parties, so that the insurance industry can function as a legally and socially legitimate risk mitigation instrument.

1. The Principle of Utmost Good Faith (Uberrimae Fidei)

This principle demands a positive obligation on the part of the insured to voluntarily disclose all material facts that may influence the insurance company's decision in accepting risks or determining premiums. Material facts include any material information, whether requested or unrequested, that is relevant to the object or subject insured. However, this principle does not only apply to the insured; Insurance companies are also required to be honest and transparent about the policy provisions, risks incurred, and the rights and obligations of each party. Thus, good faith creates mutual trust and reduces the potential for legal disputes between the insurer and the insured.

2. Principle of Indemnity

The principle of indemnity emphasizes that insurance is not a means of obtaining profits, but a mechanism to compensate for the economic losses actually suffered by the insured. In practice, the insurer is obliged to

pay compensation only in the amount of the actual loss, so that the insured cannot enrich himself from the event that is detrimental to him. This principle is implied in Article 246 of the Criminal Code which emphasizes that the main purpose of an insurance agreement is to provide compensation for losses, damages, or losses resulting from uncertain events. Indemnity ensures economic justice and prevents the abuse of insurance.

3. Principle of Subrogation

Subrogation is a legal mechanism by which the insurer who has paid for the loss of the insured object or interest acquires the right to sue a third party who is responsible for the loss. Article 284 of the Criminal Code emphasizes that after paying the claim, the insurer takes over the insured's rights to a third party, so that there is no double payment and the principle of indemnity is maintained. By subrogation, the insured remains protected, while the insurer has the right to sue the third party who caused the loss, maintaining a balance of rights and obligations in the legal relationship of insurance.

4. Principle of Contribution

The principle of contribution arises in a double insurance situation, which is when the insured insures the same object against the same risk to more than one insurer through different policies. Article 278 of the Criminal Code emphasizes that each insurer only bears a proportionate share of the value of the insured object. Contributions ensure that the insurer does not pay more than the actual loss, while the insured does not get double reimbursement. This principle includes several provisions: (a) multiple policies bear the same risk; (b) the insured interests are identical; and (c) the policy is still in effect in the event of a loss. The principle of contribution protects the interests of insurers while ensuring the integrity of the insurance system.

Overall, these four principles of good faith, indemnity, subrogation, and contributions create

a solid legal framework for insurance practices. They not only regulate the rights and obligations of each party, but also uphold justice, transparency, and accountability. These principles are important guidelines for regulators, insurance companies, and policyholders, so that every insurance claim and transaction can run according to the rules, minimize legal disputes, and increase public trust in the insurance industry in Indonesia.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

Insurance law in Indonesia is an important foundation in ensuring legal certainty, financial protection, and social stability for both insured and insurers. Insurance is not just a financial instrument, but also a risk management mechanism that transfers potential losses from individuals or organizations to insurers, thus providing economic certainty in the face of uncertain events. Risk theory and risk management suggest that risk identification, measurement, and management are at the core of insurance practice, encompassing material, personal, and legal liability risks. Insurance legal principles such as good faith, indemnity, subrogation, and contributions are the main guidelines that affirm the rights and obligations of each party, prevent abuse, and maintain fairness in insurance legal relationships. Laws and regulations, ranging from the Criminal Code, Law No. 2 of 1992, to Law No. 40 of 2014, provide a clear legal basis, including the definition of insurance, rights and obligations, and claim settlement mechanisms. This overall legal framework strengthens the role of insurance as an effective risk mitigation instrument, ensures public trust, and supports the healthy and sustainable development of the insurance industry in Indonesia.

B. Suggestion

The government and regulators need to continue to increase public literacy and legal awareness regarding insurance, so that policyholders understand their rights and obligations clearly. Insurance companies are advised to strengthen transparency, claim service,

and consistent application of insurance legal principles to avoid disputes. Risk education and risk management also need to be expanded, both for individuals and the business world, so that insurance functions optimally as an instrument of economic protection and stabilization. In addition, regulatory revisions and harmonizations can be carried out periodically to adapt industrial practices to modern socio-economic dynamics.

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