Strengthening Legal Protection for Insurance Policyholders in Indonesia: Pre-Contractual Fairness, Claims Governance, and the Policy Guarantee Program

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Abstract

Legal protection for insurance policyholders is essential to ensure legal certainty in the contractual relationship between insurers and policyholders in Indonesia. Defaults by several life insurers, disputes over investment-linked insurance products, and claim denials based on alleged non-disclosure demonstrate that policyholders remain vulnerable. This study analyses the regulation, forms, and adequacy of legal protection for policyholders, including the roles of the Financial Services Authority (OJK) and the Indonesia Deposit Insurance Corporation (LPS). It applies normative legal research using statutory, conceptual, case, and comparative approaches to the Civil Code, the Commercial Code, the Consumer Protection Law, the Insurance Law, the OJK Law, the Financial Sector Development and Strengthening Law, OJK Regulation No. 22 of 2023, Constitutional Court Decision No. 83/PUU-XXII/2024, and the United Kingdom's Consumer Insurance (Disclosure and Representations) Act 2012. The findings show that policyholder protection is multi-layered, combining preventive and repressive mechanisms, but gaps remain at four points: imbalanced pre-contractual disclosure duties, control of standard terms, claims-handling governance, and protection upon insurer failure. The Constitutional Court's decision on Article 251 of the Commercial Code and the creation of the Policy Guarantee Program under the Financial Sector Law are significant steps, but they require clear implementing regulation. The study proposes a Lifecycle Policyholder Protection Framework covering the pre-contractual, performance, claims, and insurer-failure stages.

I. INTRODUCTION

Insurance occupies a distinctive position among financial services. A policyholder pays premiums in the present in exchange for a promise of payment that may be called upon years or decades later, often at a moment of personal crisis such as illness, accident, death, or loss of property. The value of the insurance contract therefore depends almost entirely on the insurer's willingness and capacity to honour that promise when the time comes. This temporal and informational structure creates a structural imbalance between the parties: the insurer drafts the contract, controls information about the product and its own financial condition, and decides whether a claim is payable, while the policyholder must trust that the promise will be kept (Abraham, 1986; Clarke, 2005).

The Indonesian insurance industry has grown alongside rising public demand for protection against economic risk, but its development has been marked by serious episodes of failure. Several life insurers, including state-owned and long-established mutual companies, have experienced severe financial distress, leading to delayed or reduced payments to policyholders, licence revocations, and criminal proceedings against executives. Disputes concerning investment-linked insurance products, known locally as *PAYDI*, have revealed widespread mis-selling, inadequate disclosure, and misunderstanding of the nature of the products by consumers. At the level of individual contracts, claim denials based on alleged failure to disclose material facts have generated litigation and public concern. These developments show that the policyholder's position as a consumer of insurance services remains legally and practically vulnerable (Rambe & Sekarayu, 2022; Ariyanti et al., 2023).

Indonesian law provides protection for policyholders through several instruments: the Civil Code, which governs contracts generally; the Commercial Code (KUHD), which contains specific provisions on insurance contracts; Law No. 8 of 1999 on Consumer Protection; Law No. 40 of 2014 on Insurance; and Law No. 21 of 2011 on the Financial Services Authority (OJK). These instruments have been reshaped by more recent developments. Law No. 4 of 2023 on the

Development and Strengthening of the Financial Sector (P2SK Law) amended the Insurance Law, strengthened the OJK's consumer-protection mandate, and assigned the Indonesia Deposit Insurance Corporation (LPS) to administer a Policy Guarantee Program scheduled to commence in 2028. OJK Regulation No. 22 of 2023 established a comprehensive framework for consumer protection in the financial services sector. In January 2025, the Constitutional Court in Decision No. 83/PUU-XXII/2024 held Article 251 of the KUHD, which allowed an insurer to treat a policy as void for non-disclosure, to be conditionally unconstitutional unless cancellation is based on agreement between the parties or on a court decision (Constitutional Court of the Republic of Indonesia, 2025).

The importance of these questions extends beyond individual disputes. Insurance supports household resilience, protects against catastrophic health expenditure, underpins credit by covering borrowers' death or disability, and mobilises long-term savings for investment. Insurance penetration in Indonesia remains low relative to the size of its economy and population, and public trust is widely recognised as a constraint on growth. Each publicised failure or contested claim reinforces scepticism about whether insurers will honour their promises. Effective legal protection for policyholders is therefore not only a matter of individual justice but a precondition for the development of the insurance sector and its contribution to financial inclusion and social protection.

Previous Indonesian studies have mapped the legal basis of policyholder protection and distinguished between preventive and repressive protection (Husain, 2016; Badruzaman, 2019; Wasita, 2020; Budiman et al., 2022; Pawitri, 2022; Rohmatika, 2024). They have, however, largely described the legal instruments in isolation, without evaluating their adequacy in light of the structural imbalances of insurance contracts, the recent constitutional ruling, the creation of the Policy Guarantee Program, or comparative developments in jurisdictions that have reformed insurance contract law. The international literature on insurance law has long examined the problems of adhesion contracts, information asymmetry, and the reasonable expectations of policyholders (Kessler, 1943; Keeton, 1970; Rakoff, 1983; Schwarcz, 2011), but this literature has rarely been applied to Indonesian law.

This article addresses that gap by posing three research questions. First, how does Indonesian law regulate the protection of insurance policyholders after the recent statutory and constitutional developments? Second, what forms of protection are available, and where do gaps remain across the lifecycle of the insurance contract? Third, what role do the OJK and the LPS play, and how should the framework be strengthened? The article argues that Indonesian policyholder protection is multi-layered but uneven, and it proposes a Lifecycle Policyholder Protection Framework that organises duties and remedies according to the stages at which policyholders are most vulnerable.

II. RESEARCH METHODS

This research uses normative legal research to analyse legal materials governing the protection of insurance policyholders in Indonesia. The study focuses on legal norms, their interpretation, and their adequacy rather than on empirical measurement of outcomes. Four approaches are combined. The statutory approach examines the Civil Code, the KUHD, Law No. 8 of 1999 on Consumer Protection, Law No. 40 of 2014 on Insurance as amended by Law No. 4 of 2023, Law No. 21 of 2011 on the OJK, OJK Regulation No. 22 of 2023 on Consumer and Public Protection in the Financial Services Sector, and regulations concerning investment-linked products and dispute resolution. The conceptual approach analyses concepts of good faith, information asymmetry, adhesion contracts, reasonable expectations, and preventive and repressive protection. The case approach examines Constitutional Court Decision No. 83/PUU-XXII/2024 and publicly reported insurer failures as illustrations of systemic issues. The comparative approach uses the United Kingdom's consumer insurance reforms to identify functional solutions to the problem of pre-contractual disclosure.

Primary legal materials consist of legislation, regulations, and court decisions. Secondary materials consist of books and journal articles on insurance law and consumer protection. Tertiary materials, such as reports of regulatory announcements, were used to establish publicly reported facts and were cross-checked where possible. Legal materials were collected through library research and analysed qualitatively by describing, interpreting, and systematising legal provisions, evaluating them against the conceptual framework, and constructing normative recommendations. The analysis is organised around the lifecycle of the insurance

contract: pre-contract, performance, claims, and insurer failure.

III. RESULTS

A. The Multi-Layered Legal Framework

The first result is that policyholder protection in Indonesia derives from the integration of general contract law, commercial law, consumer-protection law, sector-specific insurance law, and financial supervision law. Under the Civil Code, the insurance relationship is contractual. Article 1320 sets out the requirements for a valid contract, namely consent, capacity, a specific object, and a lawful cause, so that a policy concluded through error, duress, or fraud may be annulled. Article 1338 establishes that lawfully made agreements bind the parties as law and must be performed in good faith. Article 1267 grants the injured party the right to demand performance, termination, and damages in the event of breach, and Article 1365 provides liability for unlawful acts causing loss.

The KUHD contains provisions specific to insurance. Article 246 defines insurance as an agreement by which the insurer binds itself to the insured, in exchange for a premium, to indemnify the insured for loss, damage, or loss of expected profit arising from an uncertain event. Article 250 requires an insurable interest. Article 251, discussed below, governs the consequences of misstatement and non-disclosure. Article 255 requires that insurance be made in writing in a policy, while Articles 257 and 258 provide that the contract exists from the moment of agreement, even before the policy is issued, so that the absence of a policy document does not deprive the insured of protection. Articles 260 and 261 address the responsibilities of intermediaries.

The Consumer Protection Law treats policyholders as consumers of services and insurers as business actors. Article 4 grants consumers rights to comfort, security, and safety; to correct, clear, and honest information; to be heard; to advocacy and dispute resolution; and to compensation. Article 7 obliges business actors to act in good faith, provide accurate information, and compensate losses. Article 18 prohibits certain standard clauses, including clauses that shift the business actor's responsibility, that grant the business actor the right to refuse refunds, or that are difficult to see or understand, and declares such clauses void by law (Republic of Indonesia, 1999).

The Insurance Law, as amended by the P2SK Law, is the sector-specific statute. It requires insurers to apply good governance, prudential principles, and fair business conduct; regulates insurance agents and brokers; and provides for the Policy Guarantee Program (Republic of Indonesia, 2014, 2023). Article 53 originally required insurers to participate in a policy guarantee program to be established by a separate law. The P2SK Law fulfilled this mandate by assigning the program to the LPS, with operation scheduled to begin in 2028, and by expanding the LPS's resolution functions to include insurers. Public statements by the LPS indicate that participation will be mandatory in principle but limited to insurers meeting health criteria, and that investment-linked products are expected to be excluded from the guarantee.

The OJK Law and the P2SK Law give the OJK authority to regulate, supervise, and protect consumers in the insurance sector (Republic of Indonesia, 2011). OJK Regulation No. 22 of 2023 sets out principles of adequate education, information transparency, fair treatment, protection of consumer assets, privacy and data, and effective complaint handling and dispute resolution, and it regulates product design, marketing, contracts, and post-sale conduct (Financial Services Authority, 2023). Dispute resolution outside the courts is provided through the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK), which offers mediation, adjudication, and arbitration.

Table 1. Legal Framework of Policyholder Protection in Indonesia

Layer	Main Instrument	Key Protective Function
General contract law	Civil Code, Arts. 1320, 1338, 1267, 1365	Validity of consent; good faith; remedies for breach and unlawful acts
Insurance contract law	KUHD, Arts. 246, 250, 251, 255, 257–258, 260–261	Definition, insurable interest, disclosure, formation, intermediaries
Consumer protection	Law No. 8 of 1999, Arts. 4, 7, 18	Right to information; duties of business actors; control of standard clauses
Sectoral insurance law	Law No. 40 of 2014 as amended by Law No. 4 of 2023	Governance, conduct, intermediaries, Policy Guarantee Program
Supervision and conduct	OJK Law; OJK Regulation No. 22 of 2023	Prudential supervision; market conduct; complaints and sanctions
Insurer failure	P2SK Law; LPS mandate	Policy Guarantee Program from 2028; insurer resolution
Dispute resolution	Courts; LAPS SJK	Litigation; mediation, adjudication, arbitration

Table 1 summarises the framework. Its breadth confirms the conclusion of earlier studies that protection is comprehensive in form. The question is whether the layers fit together to address the specific vulnerabilities of policyholders at each stage of the contract.

B. Pre-Contractual Disclosure and the Constitutional Ruling on Article 251 KUHD

The second result concerns the pre-contractual stage, where the most significant recent legal change has occurred. Article 251 of the KUHD provided that any incorrect statement or concealment of circumstances known to the insured, however innocent, which would have prevented the contract or led to different terms had the insurer known of it, renders the insurance void. This provision embodied the traditional doctrine of utmost good faith in its strictest form. In practice, insurers relied on it to deny claims and cancel policies, sometimes years after conclusion, on the ground that the policyholder had failed to disclose a medical condition or other fact, even where the policyholder had not been asked about it clearly and even where the non-disclosure was unrelated to the claim (Rambe & Sekarayu, 2022).

In Decision No. 83/PUU-XXII/2024, the Constitutional Court held that Article 251 is conditionally unconstitutional unless interpreted to mean that cancellation of the insurance agreement must be based on agreement between the insurer and the insured or on a court decision. The decision removes the insurer's ability to cancel unilaterally on the basis of alleged non-disclosure. The OJK has indicated that cancellation must now rest on agreement, a court decision, or an alternative dispute resolution mechanism, and has asked the industry to revise policy terms accordingly.

The decision is a significant step toward rebalancing the pre-contractual relationship. Nevertheless, it leaves several questions open. It does not specify the substantive standard by which a court should determine whether non-disclosure justifies cancellation, nor whether remedies short of cancellation, such as adjustment of premium or exclusion of a specific risk, are available. It does not address whether the policyholder's duty is to volunteer information or only to answer the insurer's questions honestly and carefully. Nor does it distinguish between deliberate, careless, and innocent non-disclosure. Without implementing regulation or judicial guidance, these questions may lead to inconsistent outcomes and protracted disputes. The comparative experience of the United Kingdom, which answered precisely these questions through its 2012 consumer insurance reform, offers a model for filling the gap.

C. Standard Terms, Product Complexity, and Mis-selling

The third result concerns the contract stage. Insurance policies are standard-form contracts drafted by insurers, and their complexity often exceeds the comprehension of ordinary consumers. Article 18 of the Consumer Protection Law prohibits certain standard clauses and requires that clauses be legible and understandable, and OJK Regulation No. 22 of 2023 requires that product information be clear and that contracts be fair. In practice, however, enforcement of these requirements has been limited, and consumers continue to encounter exclusions and conditions they did not understand at the time of purchase (Ariyanti et al., 2023; Rambe & Sekarayu, 2022).

The problem is most acute in investment-linked products. These products combine life insurance with investment, so that a portion of the premium is invested in funds whose value fluctuates. Many consumers purchased them believing they were savings or guaranteed-return products, often through bank channels, and suffered losses when investment values fell. The resulting complaints led the OJK to issue a circular letter on investment-linked insurance products in 2022, strengthening requirements on product design, disclosure, suitability assessment of prospective policyholders, and recording of the sales process. The episode demonstrates that formal disclosure is insufficient when products are inherently complex and sales incentives encourage mis-selling. It supports the view, advanced in the adhesion-contract literature, that legal protection must evaluate the substance of contract terms and the sales process, not merely whether documents were provided (Rakoff, 1983; Schwarcz, 2011).

D. Claims Handling and Dispute Resolution

The fourth result concerns the claims stage, which is the moment of truth in the insurance relationship. Previous studies consistently identify claims as the principal source of disputes (Badruzaman, 2019; Wasita, 2020; Budiman et al., 2022). Problems include delays in processing, requests for excessive documentation, denials without clear reasons, and reliance on technical

exclusions. Repressive remedies exist: a policyholder may sue for breach under Article 1267 of the Civil Code, claim damages under Article 1365, invoke consumer rights under the Consumer Protection Law, complain to the OJK, or bring the dispute to LAPS SJK. Yet these remedies impose costs and delays that are disproportionate for many claims, particularly for low- and middle-income policyholders.

The legal framework would benefit from clearer claims-handling standards. These would include maximum time limits for acknowledging and deciding claims, an obligation to give written reasons for denials with reference to specific policy terms, limits on documentation requests, and interest or penalties for unjustified delays. Such standards would transform the general duty of good faith into concrete, verifiable obligations and would provide a benchmark for supervisory action and dispute resolution.

E. Intermediaries, Bancassurance, and Distribution Risks

A further result concerns distribution. Insurance products reach consumers through agents, brokers, banks, and increasingly digital platforms. Articles 260 and 261 of the KUHD impose responsibilities on intermediaries for proper administration, and the Insurance Law regulates the licensing and conduct of agents and brokers. In practice, the most serious distribution problems have arisen through bancassurance, in which banks sell insurance products to their customers. Customers often trust bank staff as advisers on savings and may not realise that the product offered is an insurance contract with investment risk. Sales incentives tied to fee income can encourage staff to recommend products that are unsuitable for the customer's needs or risk profile.

The legal framework assigns responsibility for product information and suitability to both insurers and distributors, and OJK regulation requires recording of sales processes for certain products. However, the allocation of liability between insurers and distribution partners when mis-selling occurs remains unclear in practice. Policyholders who suffer losses may be told by the bank that the insurer is responsible and by the insurer that the bank conducted the sale. This diffusion of responsibility undermines repressive protection. A clear principle that the insurer is liable to the policyholder for misrepresentations made by its distribution partners, with rights of recourse against those partners, would simplify redress and strengthen insurers' incentives to supervise distribution.

F. Credit-Linked and Group Insurance

Policyholder protection must also address insurance products sold in connection with other transactions. Credit life insurance, which pays off a borrower's debt upon death or disability, is commonly attached to bank loans, consumer financing, and housing finance. In such arrangements, the borrower is often the insured person, the lender is the beneficiary, and the insurer is selected by the lender. Borrowers may not receive the policy document, may not know the extent of coverage, and may find that claims by their heirs are denied on grounds of pre-existing conditions that were never asked about. Group insurance provided through employers or associations raises similar issues, since individual members may have little information about the terms negotiated on their behalf.

These arrangements complicate the application of disclosure rules and consumer rights designed for individually purchased policies. The insured person's interests may diverge from those of the lender or group policyholder who negotiates the contract. The Consumer Protection Law's right to information and OJK regulation on product transparency apply, but specific rules are needed to ensure that insured persons in credit-linked and group arrangements receive key information, that they are asked clear health questions if underwriting depends on them, and that they are not compelled to buy insurance from a particular insurer as a condition of credit without a choice. The lifecycle framework applies to these arrangements with the additional requirement that the party with the greatest information and bargaining power, whether lender or insurer, bears responsibility for ensuring that the insured person understands the coverage.

G. Lessons from Insurer Failures

The fourth result concerns the systemic lessons of recent insurer failures. Although each case had specific causes, publicly available information reveals recurring patterns. Some insurers offered savings-type products with guaranteed returns significantly above market rates, funded by investments in high-risk or illiquid assets, creating liabilities that could not be met when markets fell. Some suffered from weak governance and related-party transactions. In the case of a long-established mutual insurer, the

mutual form itself complicated resolution, because policyholders were simultaneously members bearing the company's losses; the legal framework for mutual insurers was only clarified by Government Regulation No. 87 of 2019, and subsequent restructuring reduced policyholders' benefits (Pawitri, 2022).

These patterns highlight three lessons. First, product design is a prudential issue as well as a conduct issue: guaranteed-return products can create systemic risk if they are not matched by appropriate assets. Second, governance failures can persist undetected when supervisory attention focuses on formal compliance rather than on the substance of investment strategies and related-party exposures. Third, policyholders bear the ultimate cost of failure when no guarantee scheme exists and when resolution is slow. The Policy Guarantee Program addresses the third lesson, but the first two require continued strengthening of prudential and conduct supervision.

H. Judicial and Quasi-Judicial Practice

A further result concerns how disputes have been resolved in practice. Indonesian studies of claim disputes report that courts have tended to apply Article 251 of the KUHD literally, upholding insurers' denials where non-disclosure was established, even where the undisclosed fact had little connection to the loss (Rambe & Sekarayu, 2022; Badruzaman, 2019). At the same time, some decisions have relied on good faith and consumer-protection principles to protect policyholders where insurers failed to explain policy terms or where agents completed application forms on behalf of applicants. The resulting case law is inconsistent and offers limited guidance to parties.

The Constitutional Court's ruling changes the procedural context: insurers can no longer treat a policy as void by their own declaration but must obtain agreement, a court decision, or an outcome through alternative dispute resolution. This shift gives courts and LAPS SJK a central role in developing the substantive law of non-disclosure. Their decisions will determine whether Indonesian law moves toward proportionate remedies or continues the all-or-nothing approach under a new procedural form. The absence of a published, searchable body of LAPS SJK decisions limits the development of consistent standards. Publishing anonymised decisions would contribute to legal certainty and allow insurers and policyholders to anticipate outcomes.

I. Insurer Failure and the Policy Guarantee Program

The fifth result concerns the stage of insurer failure. The defaults of several life insurers revealed that, before the P2SK Law, Indonesian policyholders had no guarantee scheme comparable to deposit insurance. When an insurer failed, policyholders became creditors in liquidation or were subjected to restructuring arrangements that reduced benefits, often after long delays (Pawitri, 2022). The criminal prosecution of executives in some cases did not restore policyholders' losses.

The Policy Guarantee Program administered by the LPS from 2028 is designed to fill this gap. Its scope, however, remains to be determined through implementing regulation. Key questions include the coverage limit per policyholder, the products covered, the treatment of investment-linked products, the criteria for insurer participation, and the relationship between the guarantee and the LPS's resolution powers. The expected exclusion of investment-linked products is significant, because these products have been a major source of consumer losses. Policyholders will need clear information about which of their policies are guaranteed and to what extent. Until the program begins, policyholders remain dependent on prudential supervision and on the resolution of distressed insurers through supervisory measures.

Table 2. Gaps in Policyholder Protection across the Contract Lifecycle

Stage	Main Vulnerability	Existing Protection	Remaining Gap
Pre-contract	Harsh consequences of non-disclosure; complex products; mis-selling	Constitutional Court ruling on Art. 251 KUHD; disclosure and suitability rules	No standard for proportionate remedies; duty of disclosure undefined
Contract performance	Unfair or incomprehensible standard terms; unilateral changes	Art. 18 Consumer Protection Law; OJK Reg. 22/2023	Limited ex ante review and enforcement of unfair terms
Claims	Delays, unexplained denials, excessive documentation	Contract and tort remedies; OJK complaints; LAPS SJK	No binding claims-handling time limits or reason-giving duties

Stage	Main Vulnerability	Existing Protection	Remaining Gap
Insurer failure	Loss or reduction of benefits upon insolvency	Prudential supervision; Policy Guarantee Program from 2028	Program scope, limits, and exclusions not yet settled; interim gap until 2028

Table 2 summarises the gaps. The overall result is that Indonesian protection is strongest where general legal principles apply and weakest where specific operational standards are needed.

IV. DISCUSSION

A. From Formal Comprehensiveness to Functional Effectiveness

The results suggest a shift in the evaluation of policyholder protection from formal comprehensiveness to functional effectiveness. Earlier Indonesian studies concluded that protection is comprehensive because many legal instruments apply (Husain, 2016; Wasita, 2020; Rohmatika, 2024). This conclusion is correct as a description of the legal map, but it does not answer whether policyholders can actually obtain protection when they need it. Functional effectiveness depends on whether the law addresses the specific asymmetries of insurance relationships at each stage, whether remedies are accessible and proportionate, and whether supervisory authorities have clear standards to enforce.

From this perspective, the Indonesian framework exhibits a characteristic pattern. General principles such as good faith, consumer rights to information, and prohibition of unfair clauses are well established. Specific operational standards that translate these principles into verifiable obligations, such as proportionate remedies for non-disclosure, claims-handling time limits, and the scope of the guarantee program, are incomplete. The result is that disputes are resolved case by case through costly litigation or complaint procedures, with uncertain outcomes for both parties.

B. Interpreting Article 251 KUHD after the Constitutional Ruling

The Constitutional Court's decision offers an opportunity to modernise the law of pre-contractual disclosure. The decision itself is procedural: it requires that cancellation rest on agreement or a court decision. Courts and regulators must now determine the substantive standards to be applied. The comparative experience of the United Kingdom suggests three principles that are consistent with the Indonesian Civil Code's emphasis on good faith and with the Consumer Protection Law.

First, the policyholder's duty should be framed as a duty to answer the insurer's questions honestly and with reasonable care, rather than a duty to volunteer all material facts. Insurers are better placed to know what information is relevant to underwriting, and it is reasonable to expect them to ask clear questions. Second, remedies should be proportionate to the policyholder's state of mind. Where misrepresentation is deliberate or reckless, cancellation may be justified. Where it is careless, the insurer's remedy should reflect what it would have done had it known the truth, such as charging a higher premium, applying an exclusion, or reducing the claim proportionately. Where it is innocent and reasonable, the insurer should bear the risk. Third, the insurer should bear the burden of proving that the misrepresentation was material and that it would have affected underwriting.

These principles could be implemented through OJK regulation on policy terms and claims handling, through industry standards developed under OJK supervision, and through judicial interpretation of Article 251 in light of good faith under Article 1338 of the Civil Code. They would provide the substantive content that the Constitutional Court's procedural ruling leaves open, reducing uncertainty for insurers and policyholders alike.

C. Suitability as a Legal Duty for Complex Products

The experience with investment-linked products suggests that suitability should be treated as a legal duty rather than a marketing guideline. A suitability duty requires the insurer or distributor to assess whether a product is appropriate for the prospective policyholder's needs, financial situation, risk tolerance, and understanding, and to refrain from recommending products that are not. OJK regulation on investment-linked products introduced suitability assessment and recording requirements, which represent an important step. To be effective, the duty must be enforceable: a policyholder who was sold an unsuitable product should be able to obtain rescission or compensation without proving fraud, and the

insurer should bear the burden of demonstrating that the assessment was conducted properly.

Treating suitability as a legal duty aligns with the reciprocal conception of good faith and with the Consumer Protection Law's requirement that business actors provide correct, clear, and honest information. It also responds to the behavioural insight that consumers cannot protect themselves through disclosure alone when products are complex (Bar-Gill, 2012). In bancassurance, where the customer relationship and trust lie with the bank, the suitability duty should apply to the bank as distributor, with the insurer jointly responsible to the policyholder. This allocation would create incentives for both institutions to supervise sales practices and would simplify redress for policyholders.

D. Good Faith as a Reciprocal Duty

A recurring theme in the analysis is that good faith in insurance has historically been applied asymmetrically. The doctrine of utmost good faith was developed primarily to protect insurers against concealment by applicants, and Article 251 of the KUHD embodied this one-sided orientation. Yet Article 1338 of the Civil Code requires that all contracts be performed in good faith, and the Consumer Protection Law imposes good-faith duties specifically on business actors. Read together, these provisions support the view that good faith in insurance is reciprocal: it binds insurers as much as policyholders.

Reciprocal good faith has concrete implications. At the pre-contractual stage, it requires insurers to ask clear questions, to explain key terms and exclusions, and not to accept premiums while intending to rely on technical grounds for denying claims. At the claims stage, it requires insurers to investigate claims promptly and fairly, to pay valid claims without unreasonable delay, and not to seize on immaterial non-disclosure to avoid liability. Comparative law supports this understanding. Australia's Insurance Contracts Act 1984 (Australia, 1984) implies into every insurance contract a duty of utmost good faith that binds both parties, and courts have applied it to insurers' handling of claims. The Indonesian Constitutional Court's ruling on Article 251 can be read as a step toward this reciprocal conception, since it prevents insurers from using the doctrine unilaterally.

E. Comparative Lessons from Australia and Malaysia

Beyond the United Kingdom, two other jurisdictions provide relevant lessons. Australia's insurance contract law has long provided proportionate remedies: under the Insurance Contracts Act 1984, where non-disclosure or misrepresentation is not fraudulent, the insurer's liability is reduced to the amount that would place it in the position it would have been in had the disclosure been made, rather than allowing avoidance of the contract. Following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, which documented widespread mis-selling and unfair claims handling (Commonwealth of Australia, 2019), Australia replaced the consumer's duty of disclosure with a duty to take reasonable care not to make a misrepresentation, aligning its law with the United Kingdom's reform, and brought claims handling within the scope of financial-services regulation.

Malaysia, a jurisdiction with a developed *takāful* industry and close legal ties to Indonesia's region, introduced similar reforms through Schedule 9 of the Financial Services Act 2013 (Malaysia, 2013) and the corresponding schedule of the Islamic Financial Services Act 2013. For consumer insurance and *takāful* contracts, these schedules replace the duty to volunteer information with a duty to take reasonable care not to misrepresent in answering the insurer's questions, and they provide graduated remedies depending on whether the misrepresentation was deliberate, reckless, or careless. The Malaysian experience is significant because it shows that such reforms can be applied to both conventional and sharia insurance within a single regulatory system.

The convergence of these jurisdictions on a duty of reasonable care and proportionate remedies suggests an emerging international standard for consumer insurance. Indonesia's Constitutional Court ruling opens the door to adopting this standard. Doing so through OJK regulation and judicial interpretation would align Indonesian law with regional and international practice and provide the substantive content that the ruling leaves open.

F. The Role of the OJK: From Complaint Handling to Conduct Supervision

The OJK's role in policyholder protection has evolved from a primarily prudential focus toward

a broader conduct-of-business mandate, reinforced by the P2SK Law and OJK Regulation No. 22 of 2023. The analysis suggests that this evolution should continue in three directions. First, the OJK should engage in ex ante review of policy forms and standard terms, particularly for complex products, to identify unfair or misleading terms before they reach consumers. Schwarcz's (2011) evidence that insurers vary standard terms in ways consumers cannot detect supports such review. Second, the OJK should establish binding claims-handling standards and monitor insurers' claims performance through indicators such as claim-payment times, denial rates, and complaint rates, publishing comparative data to promote market discipline. Third, the OJK should continue to strengthen its supervision of sales practices, including bank-assurance channels, with particular attention to suitability assessments and incentive structures that encourage mis-selling.

Financial literacy remains important, as earlier studies emphasise, but it cannot substitute for regulation. The complexity of insurance products and the structural imbalance between insurers and policyholders mean that even financially literate consumers may be unable to evaluate policy terms or insurer solvency. Literacy programmes should therefore complement, not replace, substantive protection.

G. The Policy Guarantee Program and Systemic Protection

The Policy Guarantee Program represents a structural innovation that changes the risk allocation between policyholders and the financial system. For the first time, policyholders of covered insurers will have a statutory guarantee against insurer failure, analogous to the protection depositors enjoy. To realise its potential, implementing regulation should address four issues. First, coverage limits should be set at a level that protects the majority of retail policyholders while preserving incentives for prudent management. Second, the treatment of investment-linked products should be clearly communicated; if the investment component is excluded, the protection component should be considered for coverage, and policyholders should be informed at the point of sale. Third, participation criteria should be designed so that excluding unhealthy insurers does not leave their policyholders without protection; supervisory action should ensure that such insurers either recover or exit in an orderly way before the program begins. Fourth, the interaction between the guarantee and the LPS's resolution powers should be clarified so that, wherever possible, policies are transferred to healthy insurers rather than terminated.

H. The Lifecycle Policyholder Protection Framework

Building on the analysis, this article proposes a Lifecycle Policyholder Protection Framework organised around four stages. At the pre-contractual stage, the framework requires clear and targeted questions from insurers, proportionate remedies for misrepresentation, suitability assessment for complex products, plain-language key information documents, and recorded sales processes for high-risk channels. At the contract performance stage, it requires ex ante supervisory review of standard terms, enforcement of the Consumer Protection Law's prohibition of unfair clauses, and restrictions on unilateral changes to policy terms. At the claims stage, it requires binding time limits, written reasons for denials, limits on documentation demands, interest for unjustified delays, and accessible dispute resolution through LAPS SJK with procedures suited to small claims. At the insurer-failure stage, it requires effective prudential supervision, early intervention, transparent communication with policyholders, and implementation of the Policy Guarantee Program with clear coverage rules and resolution mechanisms that prioritise continuity of cover.

Table 3. Lifecycle Policyholder Protection Framework

Stage	Core Measures	Responsible Actors	Legal Anchor
Pre-contract	Targeted questions; proportionate remedies for misrepresentation; suitability assessment; key information documents; recorded sales	Insurers; intermediaries; OJK	KUHD Art. 251 as interpreted by Constitutional Court; Consumer Protection Law; OJK Reg. 22/2023
Contract performance	Ex ante review of standard terms; voiding unfair clauses; limits on unilateral changes	OJK; courts	Consumer Protection Law Art. 18; Civil Code Art. 1338
Claims	Time limits; written reasons; documentation limits; interest for delay; small-claims ADR	Insurers; OJK; LAPS SJK	Civil Code Arts. 1267, 1365; OJK Reg. 22/2023

Stage	Core Measures	Responsible Actors	Legal Anchor
Insurer failure	Early intervention; transparent communication; guarantee coverage; transfer of portfolios	OJK; LPS	Insurance Law as amended by P2SK Law; LPS mandate

Table 3 summarises the framework. Its premise is that policyholder vulnerability is not uniform but stage-specific, and that effective protection requires instruments tailored to each stage. The framework builds on existing legal authority and requires primarily implementing regulation and supervisory practice rather than new legislation.

I. Access to Justice: Small Claims and Collective Redress

The effectiveness of repressive protection depends on whether policyholders can access remedies at a cost proportionate to their claims. Ordinary civil litigation is slow and costly. Indonesian procedural law offers alternatives. The small-claims procedure established by Supreme Court Regulation No. 2 of 2015, as amended by Supreme Court Regulation No. 4 of 2019, allows simple civil claims up to a specified value to be resolved by a single judge within a short period. Group actions are possible through the class-action procedure under Supreme Court Regulation No. 1 of 2002 and through consumer group lawsuits under Article 46 of the Consumer Protection Law. LAPS SJK offers mediation, adjudication, and arbitration tailored to financial services.

Each mechanism has limitations. Small-claims procedures are suitable for straightforward contractual disputes but may be less suitable where complex questions of non-disclosure or product mis-selling arise. Class actions require coordination among claimants and face procedural hurdles. LAPS SJK depends on the participation of financial institutions and on the enforceability of its outcomes. For investment-linked products, where large numbers of policyholders may have suffered similar losses from similar sales practices, collective redress could be particularly valuable, both for efficiency and for creating incentives for industry-wide correction. The OJK could complement private redress by using supervisory powers to require insurers to review sales and compensate affected customers, an approach that avoids the need for each policyholder to bring an individual claim.

J. Data, Digital Distribution, and Underwriting

Digitalisation creates new challenges for policyholder protection. Insurers and insurtech platforms increasingly use digital channels for sales and claims and rely on data, including health and behavioural data, for underwriting and pricing. Law No. 27 of 2022 on Personal Data Protection classifies health data and personal financial data as specific personal data requiring heightened protection, and requires controllers to inform data subjects of the purposes of processing and to obtain a lawful basis. For insurance, these requirements interact with disclosure duties: an insurer that collects data from third parties may know more about the applicant than the applicant discloses, which complicates any later claim of non-disclosure. If an insurer had access to relevant information through its own data processing, it should not be permitted to rely on the applicant's failure to disclose the same information.

Digital distribution also changes the nature of consent. Online applications may present questions and terms in formats that encourage rapid acceptance without careful reading. The principle that insurers should ask clear questions and present key terms prominently is even more important in digital channels. OJK regulation on consumer protection applies to digital distribution, but specific standards for digital disclosure, such as layered information, mandatory pauses before acceptance of complex products, and accessible records of answers given, would strengthen protection.

K. Anticipating Objections

Insurers may object that strengthening policyholder protection will increase costs and premiums, encourage fraud, or undermine underwriting. These concerns deserve consideration. Proportionate remedies for misrepresentation may increase claims costs at the margin, but they also reduce disputes, litigation costs, and reputational damage, and they place the burden of clear questioning on the party best able to bear it. The United Kingdom's experience indicates that a duty of reasonable care, combined with stronger remedies for deliberate misrepresentation, can protect honest consumers while preserving insurers' ability to respond to fraud (Lowry et al., 2011). Claims-handling standards may impose administrative costs, but they also improve efficiency and public confidence, which supports market growth. Low

public trust in insurance, fuelled by publicised failures and claim disputes, is itself a significant cost to the industry.

A further objection is that the Policy Guarantee Program may create moral hazard by reducing policyholders' incentives to choose sound insurers and insurers' incentives to manage risk prudently. Deposit insurance raises similar concerns, which are managed through coverage limits, risk-based premiums, and strong supervision. Applying these tools to the guarantee program can contain moral hazard while delivering the benefits of protection. Baker (1996) cautions that moral-hazard arguments are often deployed selectively against policyholders; a balanced approach recognises that insurer-side risks, including governance failures, are equally significant.

L. Sharia Insurance in Transition

The sharia segment warrants attention in its own right because it is undergoing structural change. Insurers that operated sharia units within conventional companies are required to separate them into independent sharia insurers or transfer their portfolios, a process regulated by OJK Regulation No. 11 of 2023. The transition carries risks for participants: newly separated entities may be thinly capitalised, may lack experienced management, and may face pressure to grow quickly. Participants whose contributions are held in *tabarruʿ* funds have a direct interest in the solvency of those funds and in the operator's adherence to its fiduciary duties. Protection during the transition should therefore include adequate capital requirements for new sharia insurers, clear rules for the transfer of *tabarruʿ* funds and surplus, continuity of coverage for existing participants, and transparent communication about any changes in operator or fund management. Treating these safeguards as part of the lifecycle framework ensures that the growth of the sharia segment does not come at the expense of participants' security.

M. Coordination between the OJK and the LPS

The introduction of the Policy Guarantee Program creates a new institutional relationship between the OJK, as supervisor, and the LPS, as guarantor and resolution authority. Effective protection depends on coordination between the two. The OJK's supervisory information determines whether insurers meet participation criteria and when intervention is needed; the LPS's resolution powers determine how failing insurers are handled. Experience with deposit insurance shows that delayed intervention increases the costs of failure for guarantee funds and for those not fully covered. Clear protocols for information sharing, early warning, and the transfer of supervisory responsibility to the resolution authority are therefore essential.

The interim period before the program begins in 2028 is particularly important. Insurers that are currently weak may not meet participation criteria when the program starts. If they are excluded without being resolved, their policyholders could be left without protection while policyholders of healthy insurers enjoy guarantees. Supervisory strategy during this period should prioritise either the recovery or the orderly exit of weak insurers, including the transfer of their portfolios to sound insurers, so that the guarantee program begins with an industry in which all licensed insurers are eligible.

Table 4. Priority Regulatory Instruments for Strengthening Policyholder Protection

Instrument	Content	Issuing Authority
Regulation on pre-contractual disclosure	Duty of reasonable care in answering questions; proportionate remedies; burden of proof on insurer	OJK, implementing the Constitutional Court ruling
Claims-handling standard	Time limits; written reasons for denials; documentation limits; interest for delay; reporting of claims indicators	OJK
Standard-term review guidance	Ex ante review of policy forms for complex products; list of unfair terms	OJK, consistent with Consumer Protection Law
Policy Guarantee Program regulations	Coverage limits; product scope; participation criteria; portfolio transfer; communication to policyholders	Government and LPS, with OJK coordination
Publication of dispute outcomes	Anonymised LAPS SJK decisions and complaint statistics	LAPS SJK and OJK

Table 4 summarises the priority instruments. Most can be issued under existing statutory authority, which means that reform does not depend on new legislation and can be implemented within a relatively short period.

N. Implications for Sharia Insurance

The framework applies equally to sharia insurance, with additional considerations. In *takāful*, participants' contributions to the *tabarruʿ* fund are held for mutual assistance, and the operator acts as manager. Protection of

participants therefore requires strict segregation of the risk-sharing fund from the operator's own funds, transparency about the allocation of contributions between the *tabarruʿ* fund, investment, and operator fees, and clear rules on the distribution of surplus (Archer et al., 2009). The principles of honesty and the prohibition of *gharar* in DSN-MUI Fatwa No. 21/DSN-MUI/X/2001 reinforce the duties of disclosure and fair dealing. The ongoing spin-off of sharia units into independent sharia insurers under OJK Regulation No. 11 of 2023 is an opportunity to ensure that new entities have adequate capital and governance, so that participants are not exposed to the risks that led to failures in the conventional sector. The coverage of *takāful* products under the Policy Guarantee Program should also be clarified, taking into account the mutual nature of the *tabarruʿ* fund.

O. Theoretical Contribution and Limitations

The article contributes to Indonesian insurance-law scholarship in three ways. First, it moves beyond the descriptive classification of protection as preventive and repressive by organising protection according to the lifecycle of the insurance contract and the specific vulnerabilities of each stage. Second, it analyses the implications of the Constitutional Court's ruling on Article 251 KUHD and the Policy Guarantee Program, which have not yet been integrated into the literature. Third, it introduces comparative standards from the United Kingdom, Australia, and Malaysia that offer concrete guidance for filling the gaps left by these developments.

The study has limitations. As normative research, it does not measure claim denial rates, complaint outcomes, or the effects of regulatory changes on policyholders. Information about insurer failures is drawn from public sources and may be incomplete. The implementing regulations for the Policy Guarantee Program were not finalised at the time of writing, so the analysis of the program is necessarily provisional. Future research should examine judicial and LAPS SJK decisions after the Constitutional Court's ruling, analyse claims data, and evaluate the design and implementation of the guarantee program once it begins.

V. CONCLUSION AND RECOMMENDATIONS

A. Conclusion

Legal protection for insurance policyholders in Indonesia is multi-layered, drawing on the Civil Code, the Commercial Code, the Consumer Protection Law, the Insurance Law as amended by the P2SK Law, and the supervisory framework of the OJK. It encompasses preventive protection through good faith, information duties, and supervision, and repressive protection through remedies for breach and unlawful acts, consumer compensation, complaints, and alternative dispute resolution. Recent developments, notably the Constitutional Court's ruling that insurers may not unilaterally cancel policies under Article 251 KUHD and the creation of the Policy Guarantee Program administered by the LPS, represent significant improvements.

Nevertheless, protection remains uneven across the lifecycle of the insurance contract. Gaps persist in the substantive standards for pre-contractual disclosure, the control of standard terms and complex products, claims-handling governance, and the scope of protection upon insurer failure. The proposed Lifecycle Policyholder Protection Framework addresses these gaps by organising duties and remedies according to the stage at which policyholders are vulnerable, building on existing legal authority. Its central claim is that the effectiveness of policyholder protection depends less on the number of legal instruments than on the existence of operational standards that translate general principles into verifiable obligations.

The analysis also shows that the protection of policyholders and the health of the insurance industry are not opposing goals. An industry in which policyholders can trust that honest applications will be honoured, that claims will be handled fairly and promptly, and that their policies are protected against insurer failure is an industry with greater capacity to grow. Conversely, an industry that relies on technical grounds to deny claims and on complex products whose risks consumers do not understand undermines its own long-term prospects. Legal reform that strengthens protection at each stage of the contract lifecycle is therefore an investment in the sustainability of the sector as well as in justice for individual policyholders.

B. Recommendations

First, the OJK should issue regulation or guidance implementing the Constitutional Court's decision on Article 251 KUHD by defining the policyholder's duty as a duty to answer questions with reasonable care and by establishing proportionate remedies for misrepresentation. Second, the OJK should establish binding claims-

handling standards, including time limits and reason-giving duties, and publish comparative claims-performance data. Third, the government and the LPS should finalise implementing regulation for the Policy Guarantee Program, with clear coverage limits, product scope, participation criteria, and portfolio-transfer mechanisms, and communicate these clearly to policyholders. Fourth, insurers should revise policy terms and sales processes to comply with these standards, and the public should be supported through financial education that complements rather than replaces regulatory protection. Future research should examine court and LAPS SJK decisions after the Constitutional Court's ruling to assess how Article 251 is being applied in practice.

REFERENCES

Abraham, K. S. (1986). *Distributing risk: Insurance, legal theory, and public policy*. Yale University Press.

Akerlof, G. A. (1970). The market for "lemons": Quality uncertainty and the market mechanism. *The Quarterly Journal of Economics, 84*(3), 488–500. https://doi.org/10.2307/1879431

Archer, S., Karim, R. A. A., & Nienhaus, V. (Eds.). (2009). *Takaful Islamic insurance: Concepts and regulatory issues*. John Wiley & Sons.

Ariyanti, O., Anisa, D., & Asari, A. (2023). Perlindungan hukum pemegang polis asuransi dalam pembayaran klaim asuransi. *Jurnal el-Qanuniy, 9*(1), 128–144.

Australia. (1984). *Insurance Contracts Act 1984* (Cth).

Badruzaman, D. (2019). Perlindungan hukum tertanggung dalam pembayaran klaim asuransi jiwa. *Amwaluna: Jurnal Ekonomi dan Keuangan Syariah, 3*(1), 96–118.

Baker, T. (1996). On the genealogy of moral hazard. *Texas Law Review, 75*(2), 237–292.

Bar-Gill, O. (2012). *Seduction by contract: Law, economics, and psychology in consumer markets*. Oxford University Press.

Budiman, H., et al. (2022). Perlindungan hukum bagi pemegang polis dalam penyelesaian klaim asuransi jiwa. *Logika: Jurnal Penelitian Universitas Kuningan, 13*(2), 168–180.

Clarke, M. (2005). *Policies and perceptions of insurance law in the twenty-first century*. Oxford University Press.

Commonwealth of Australia. (2019). *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry: Final report*. Commonwealth of Australia.

Constitutional Court of the Republic of Indonesia. (2025). *Decision No. 83/PUU-XXII/2024 on the judicial review of the Commercial Code (Article 251)*. Mahkamah Konstitusi Republik Indonesia.

Dewan Syariah Nasional Majelis Ulama Indonesia. (2001). *Fatwa No. 21/DSN-MUI/X/2001 on general guidelines for sharia insurance*. DSN-MUI.

Financial Services Authority (OJK). (2023). *OJK Regulation No. 22 of 2023 on Consumer and Public Protection in the Financial Services Sector*. Otoritas Jasa Keuangan.

Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Bina Ilmu.

Husain, F. (2016). Perlindungan hukum terhadap pemegang polis asuransi menurut UU No. 40 Tahun 2014 tentang perasuransian. *Lex Crimen, 5*(6).

Keeton, R. E. (1970). Insurance law rights at variance with policy provisions. *Harvard Law Review, 83*(5), 961–985. https://doi.org/10.2307/1339592

Kessler, F. (1943). Contracts of adhesion: Some thoughts about freedom of contract. *Columbia Law Review, 43*(5), 629–642. https://doi.org/10.2307/1117229

Lowry, J., Rawlings, P., & Merkin, R. (2011). *Insurance law: Doctrines and principles* (3rd ed.). Hart Publishing.

Malaysia. (2013). *Financial Services Act 2013* (Act 758) and *Islamic Financial Services Act 2013* (Act 759).

Pawitri, R. N. (2022). Kedudukan pemegang polis dalam perusahaan asuransi. *Jurnal Hukum*.

Rakoff, T. D. (1983). Contracts of adhesion: An essay in reconstruction. *Harvard Law Review, 96*(6), 1173–1284. https://doi.org/10.2307/1340940

Rambe, S. H., & Sekarayu, P. (2022). Perlindungan hukum nasabah atas gagal klaim asuransi akibat ketidaktransparanan informasi polis asuransi. *Jurnal USM Law Review, 5*(1), 93–109.

Republic of Indonesia. (1999). *Law No. 8 of 1999 on Consumer Protection*.

Republic of Indonesia. (2011). *Law No. 21 of 2011 on the Financial Services Authority*.

Republic of Indonesia. (2014). *Law No. 40 of 2014 on Insurance*.

Republic of Indonesia. (2023). *Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector*.

Rohmatika, F. (2024). Perlindungan hukum klaim asuransi di Indonesia. *Jurnal Riset Ekonomi dan Akuntansi*.

Rothschild, M., & Stiglitz, J. (1976). Equilibrium in competitive insurance markets: An essay on the economics of imperfect information. *The Quarterly Journal of Economics, 90*(4), 629–649. https://doi.org/10.2307/1885326

Schwarcz, D. (2011). Reevaluating standardized insurance policies. *The University of Chicago Law Review, 78*(4), 1263–1348.

Thaler, R. H., & Sunstein, C. R. (2008). *Nudge: Improving decisions about health, wealth, and happiness*. Yale University Press.

United Kingdom. (2012). *Consumer Insurance (Disclosure and Representations) Act 2012* (c. 6). The Stationery Office.

Wasita, A. (2020). Perlindungan hukum terhadap pemegang polis asuransi jiwa. *BECOSS Journal, 2*(1), 105–113.