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# Reconfiguring Insurance Protection in Indonesia: Constitutional Reform, Policy Guarantees, and Market Trust

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ABSTRACT

*Insurance can perform its risk-transfer and financial-stability functions only when policyholders trust that contractual promises will be honored. In Indonesia, such trust is challenged by information asymmetry, unequal bargaining power in standard-form policies, and legal uncertainty concerning insurer failure and coverage cancellation. This article examines how two recent developments reconfigure insurance protection: the Policy Guarantee Program under Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, as amended by Law No. 4 of 2026, and Constitutional Court Decision No. 83/PUU-XXII/2024. Using normative legal research with statutory and case approaches, the article applies law-and-economics concepts as analytical lenses. It distinguishes institutional protection, which addresses insurer failure, from contractual protection, which limits cancellation of coverage to agreement between the insurer and insured or a court decision. The findings show that these reforms create a layered protection architecture that is complementary but not yet fully integrated. Regulatory frictions remain concerning disputed claims within the guarantee scheme, policies cancelled before adjudication, policy transfers without consent during resolution, and products combining protection and investment. The article argues that reducing policyholders' exposure to nonperformance risk can strengthen institutional and contractual trust, thereby reinforcing market trust. Whether these reforms ultimately increase insurance penetration, however, requires empirical investigation.*

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## 1. Introduction

Insurance occupies a paradoxical position in the Indonesian economy. Functionally, it is a risk-transfer mechanism that should serve as a pillar of financial stability for households and businesses. In practice, however, its reach remains narrow. The Financial Services Authority (*Otoritas Jasa Keuangan*, OJK) reported insurance penetration of only 2.72 percent of gross domestic product as of February 2025, a level that is considerably below that of neighboring ASEAN markets.[1] The 2025 National Financial Literacy and Inclusion Survey shows a further imbalance: the insurance literacy index reached 45.45 percent, while the insurance inclusion index was only 28.50 percent.[2] Many people therefore understand insurance but do not buy it. This gap cannot be explained solely by a lack of public outreach. It indicates deeper structural problems, particularly those relating to the credibility of the insurance promise.

The credibility problem has a legal-economic structure. An insurance contract is an exchange of money today against a conditional promise of money in the future, and the buyer must trust that the insurer will pay when the insured event occurs.[3] Three features of the Indonesian market weaken that trust. First, information is distributed asymmetrically: the applicant knows more about the insured risk, while the insurer knows more about its policy terms and its own financial condition. Second, policies are drafted as standard forms, so the policyholder adheres to terms that are rarely read or negotiated.[4] Third, the law itself was uncertain about two questions that matter most to a policyholder: what happens if the insurer fails, and whether the insurer may unilaterally treat coverage as void when a claim is filed. Experimental and theoretical studies show that individuals are highly sensitive to the risk that an insurance contract will not be performed and reduce their demand for insurance by more than standard models predict.[5] When the law leaves nonperformance risk with the policyholder, low participation is a predictable result.

Two normative developments have recently changed this allocation of risk. The first is Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector, which mandates the Indonesia Deposit Insurance Corporation (*Lembaga Penjamin*

[1] P H Untari, "OJK Catat Penetrasi Asuransi Baru 2,72% per Februari 2025," Bisnis.com, 2025, https://finansial.bisnis.com/read/20250429/215/1872899/ojk-catat-penetrasi-asuransi-baru-272-per-februari-2025.

[2] Otoritas Jasa Keuangan, "OJK Dan BPS Umumkan Hasil Survei Nasional Literasi Dan Inklusi Keuangan (SNLIK) Tahun 2025," OJK, 2025, https://ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Pages/OJK-dan-BPS-Umumkan-Hasil-Survei-Nasional-Literasi-Dan-Inklusi-Keuangan-SNLIK-Tahun-2025.aspx.

[3] Luigi Guiso, "Trust and Insurance," *Geneva Papers on Risk and Insurance: Issues and Practice* 46, no. 4 (2021): 509–12, https://doi.org/10.1057/s41288-021-00241-7.

[4] Michelle Cumyn, "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?," *The American Journal of Comparative Law* 73, no. 1 (September 1, 2025): 129–63, https://doi.org/10.1093/ajcl/avaf016.

[5] Johannes G. Jaspersen, Richard Peter, and Marc A. Ragin, *Probability Weighting and Insurance Demand in a Unified Framework*, *GENEVA Risk and Insurance Review*, vol. 48 (Palgrave Macmillan UK, 2023), https://doi.org/10.1057/s10713-022-00074-x.

*Simpanan*, LPS) to administer a Policy Guarantee Program (*Program Penjaminan Polis*, PPP).[6] This framework was amended by Law No. 4 of 2026, which redesigned the program around resolution and confirmed that it must be implemented no later than January 2028.[7] The elucidation of the amended Insurance Law states the economic purpose openly: the program is intended to increase public trust in the insurance industry so that people become more willing to use insurance services.[8] The second development is Constitutional Court Decision No. 83/PUU-XXII/2024. The Court declared Article 251 of the Commercial Code (*Kitab Undang-Undang Hukum Dagang*, KUHD), a colonial-era provision that allowed coverage to be treated as void when the insured misstated or concealed information, even in good faith, conditionally unconstitutional. Cancellation of coverage must now be based on the agreement of the insurer and the insured or on a court decision.[9]

These developments operate at different levels. The financial-sector reform builds a collective safety net against insurer failure, while the Constitutional Court decision restructures the individual contract between insurer and policyholder. Restricting unilateral cancellation may reduce opportunism by insurers after a loss, but it may also raise the costs of underwriting, verification, and dispute resolution, because insurers lose a low-cost exit. A policy guarantee may likewise strengthen confidence, but it may also weaken market discipline if shareholders, managers, or policyholders expect excessive protection.[10] The legal question is therefore how the law now distributes contractual and institutional risk, and with what consequences for trust and participation.

Existing scholarship has not adequately analyzed this interaction. Indonesian legal studies have examined the default of insurers such as Kresna Life and the weak position of policyholders in bankruptcy,[11] the inconsistent judicial interpretation of good faith under

[6] "Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan)" (2023). arts. 79–86.

[7] "Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2023)" (2026). art. I points 78–81 and art. II point 4.

[8] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). Elucidation of art. I point 75 (art. 53 para. (1) of the Insurance Law).

[9] Constitutional Court of the Republic of Indonesia, Decision No. 83/PUU-XXII/2024 on the Judicial Review of the Commercial Code against the 1945 Constitution (Putusan Nomor 83/PUU-XXII/2024 tentang Pengujian Kitab Undang-Undang Hukum terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945) (2025). 464.

[10] Qihao He, Michael Faure, and Chengwei Liu, "The Possibilities and Limits of Insurance as Governance in Insuring Pandemics," *Geneva Papers on Risk and Insurance: Issues and Practice* 48, no. 3 (2023): 641–68, https://doi.org/10.1057/s41288-023-00291-z.

[11] Utiyafina Mardhati Hazhin and Marchety Riwani Diaz, "Efektivitas Bentuk Perlindungan Hukum Terhadap Pemegang Polis Asuransi Jiwa Kresna Pasca Putusan Kasasi," *Negara Hukum* 13, no. 2 (2022): 209–26, https://doi.org/10.22212/jnh.v13i2.3345; Xander Gorga Gultom, "Menyoal Legal Standing

Article 251,[12] and the procedural implications of the Constitutional Court decision for life-insurance claims.[13] Economic studies, on the other hand, tend to treat penetration as a function of income, literacy, or product design, without examining the legal rules that determine whether the insurance promise is credible.[14] What remains missing is an analysis of how institutional policyholder protection under the financial-sector reform interacts with the constitutional restructuring of contractual risk under Decision No. 83/PUU-XXII/2024.

This article seeks to address that gap through a constitutional law-and-economics reading of insurance protection. The term "constitutional reform" is used here in a specific sense: it refers to the reform of private insurance law that occurs through constitutional adjudication, as distinct from the legislative reform of the financial sector. The article asks: how do the financial-sector reform framework and Constitutional Court Decision No. 83/PUU-XXII/2024 restructure the legal allocation of risk between insurers and policyholders, and what are the potential economic implications of this restructuring for public trust and insurance-market participation in Indonesia? The article argues that constitutional reform and policy guarantees together reconfigure insurance protection into a layered architecture whose ultimate object is market trust. The architecture is promising, but its layers are not yet aligned.

## 2. Legal Material and Methods

This study is normative legal research (doctrinal research), in which legal materials constitute the primary object of analysis.[15] The approaches used are the statutory approach and the case approach.[16] The statutory approach examines the provisions on the Policy Guarantee Program in Law No. 4 of 2023 and the changes introduced by Law No. 4 of 2026. The case approach examines Constitutional Court Decision No. 83/PUU-XXII/2024, focusing on its *ratio decidendi* and on the authoritative wording of its operative part (*amar putusan*), as published by the Court.

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Permohonan Penundaan Kewajiban Pembayaran Utang Oleh Pemegang Polis Asuransi," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 8, no. 1 (2023): 80–96, https://doi.org/10.30863/ajmpi.v8i1.3813.

[12] Mokhamad Khoirul Huda, "Good Faith in Life Insurance Contract by Indonesian Court," *Hasanuddin Law Review* 3, no. 1 (2017): 49–58, https://doi.org/10.20956/halrev.v3i1.1046.

[13] Reza Yuda and Kamal Ubaidillah, "Implications of the Constitutional Court Decision Number 83/PUU-XXII/2024 on the Procedure and Proof of Policy Claims in Life Insurance Disputes," *Law Research Review Quarterly* 12, no. 5 (2026): 2335–60, https://doi.org/10.15294/lrrq.v12i5.47525.

[14] Philipp Scharner, David Sonnenberger, and Gregor Weiß, "Revisiting the Insurance–Growth Nexus," *Economic Analysis and Policy* 79 (2023): 525–39, https://doi.org/10.1016/j.eap.2023.06.007; Paola Bongini, Doriana Cucinelli, and Maria Gaia Soana, "Insurance Holdings: Does Individual Insurance Literacy Matter?," *Finance Research Letters* 58, no. PC (December 2023): 104511, https://doi.org/10.1016/j.frl.2023.104511.

[15] Soerjono Soekanto and Sri Mamuji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindu Persada, 2017).

[16] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017).

The primary legal materials consist of: (1) the 1945 Constitution of the Republic of Indonesia, particularly Articles 27 paragraph (1), 28D paragraph (1), 28G paragraph (1), 28H paragraph (4), and 33 paragraph (4); (2) the Civil Code, particularly Articles 1266, 1320, and 1338, and the Commercial Code, particularly Articles 246 and 251; (3) Law No. 8 of 1999 on Consumer Protection; (4) Law No. 40 of 2014 on Insurance; (5) Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector; (6) Law No. 4 of 2026 amending Law No. 4 of 2023; (7) OJK Regulation No. 22 of 2023 on Consumer and Public Protection in the Financial Services Sector; and (8) Constitutional Court Decision No. 83/PUU-XXII/2024. Law No. 2 of 1992 on Insurance Business is used as historical material to show that the earlier framework contained no policy guarantee scheme. Secondary materials include legal and economic scholarship, comparative statutes, international supervisory documents, and official publications of OJK.

The economic perspective is operationalized through an explicit analytical framework drawn from law and economics. Seven concepts are used: information asymmetry, which gives rise to adverse selection before the contract and moral hazard after it;[17] bargaining power in standard-form contracting; risk allocation between the contracting parties; transaction costs of verification and dispute resolution; nonperformance risk; regulatory incentives and market discipline; and trust. Trust is divided into institutional trust, meaning confidence in solvency, supervision, resolution, and guarantees, and contractual trust, meaning confidence in disclosure, claims handling, good faith, and fair treatment within the policy. These concepts serve as analytical lenses, not as hypotheses tested with data, so statements about penetration, disputes, or compliance costs are reasoned expectations.

Legal materials were collected through library research, inventoried, classified by hierarchy and type, and systematized to avoid contradictions. They were then analyzed deductively, from the general norms of the Constitution, the financial-sector laws, and the decision to the specific issues of risk allocation and policyholder protection.

## 3. Results and Discussion

### 3.1. Market Trust and the Legal Allocation of Insurance Risk

Normatively, Article 246 of the Commercial Code defines insurance as an agreement under which the insurer, in return for a premium, undertakes to compensate the insured for loss, damage, or loss of expected profit resulting from an uncertain event. Article 1 point 1 of Law No. 40 of 2014 extends this definition to payments based on the death or survival

[17] George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," *The Quarterly Journal of Economics* 84, no. 3 (August 1970): 488, https://doi.org/10.2307/1879431; Joseph E. Stiglitz, Jungyoll Yun, and Andrew Kosenko, "Equilibrium in a Competitive Insurance Market Under Adverse Selection with Endogenous Information," *NBER Working Paper Series*, 2017, 67, http://www.nber.org/papers/w23556.

of the insured and to legal liability toward third parties.[18] The essence of this agreement is the transfer and pooling of risk. Recent economic literature adds that insurance does more than transfer risk from a risk-averse person: it aligns the risk in a person's financial means with the risk in that person's financial needs.[19] Insurance also mobilizes long-term funds. Premiums collected by insurers are invested in financial instruments, so that the industry functions as an institutional investor.[20] A systematic review of Indonesian studies reaches a similar conclusion for sharia insurance, which contributes to growth through intermediation and through protection that stabilizes households and small enterprises.[21] In the context of natural disasters, insurance is also discussed as a financing mechanism for sustainable economic recovery.[22]

These functions are conditional on enough people paying a certain premium today for an uncertain payment later, and the relation between insurance and development runs both ways. A panel study of 130 countries finds that economic growth increases insurance consumption, using the quality of government regulation as an instrument for growth.[23] A long-run study of twenty countries from 1850 to 2020 rejects the assumption that life-insurance demand follows a single income-driven curve and shows two distinct waves of expansion, one of which was driven by a shift to savings products.[24] For Indonesia, income growth alone will not close the penetration gap; the legal credibility of the product matters as well.

The central bridge between law and economics can therefore be stated as an analytical proposition. Insurance can perform its risk-transfer and financial-stability functions only where policyholders have credible protection against three risks: contractual opportunism by the insurer, insolvency of the insurer, and legal uncertainty about which of these risks the policyholder must bear. Policyholder protection is thus not merely a

[18] "Law No. 40 of 2014 on Insurance (Undang-Undang No.40 Tahun 2014 Tentang Perasuransian)" (2014). art. 1 point 1.

[19] Markus Rieger-Fels, "Why Do People Buy Insurance? A Modern Answer to an Old Question," *Risk Management and Insurance Review* 27, no. 1 (April 27, 2024): 89–114, https://doi.org/10.1111/rmir.12260.

[20] Mariam Benazir and Lenny Suardi, "Analysis of Changes in Investment Placement Strategies of Life Insurance Companies on Indonesia from January 2020 to December 2023," *Jurnal Indonesia Sosial Sains* 7, no. 2 (February 10, 2026): 424–31, https://doi.org/10.59141/jiss.v7i2.2244.

[21] Rizki Anggini, Andri Soemitra, and Waizul Qarni, "Analisis Peran Asuransi Syariah Dalam Mendukung Pertumbuhan Ekonomi Indonesia : Systematic Literatur Riview.," *Jambura Economic Education Journal* 8, no. 2 (April 30, 2026): 473–91, https://doi.org/10.37479/jeej.v8i2.37787; Selvi Harvia Santri and Rosyidi Hamzah, "Prospects And Challenges of Sharia Insurance (Takaful) for The Economy," *Law Development Journal* 8, no. 2 (2026): 655–70, https://doi.org/10.30659/ldj.8.2.655-671.

[22] Kalfin et al., "Insurance as an Alternative for Sustainable Economic Recovery after Natural Disasters: A Systematic Literature Review," *Sustainability (Switzerland)* 14, no. 7 (2022): 1–18, https://doi.org/10.3390/su14074349.

[23] Scharner, Sonnenberger, and Weiß, "Revisiting the Insurance–Growth Nexus," 525.

[24] Sebastian Kohl and Matthias Römer, "Insurance Demand: A Historical Long-Run Perspective (1850–2020)," *Geneva Papers on Risk and Insurance: Issues and Practice* 50, no. 3 (2025): 595–618, https://doi.org/10.1057/s41288-024-00339-8.

consumer-protection objective. It is an important institutional condition for a functioning insurance market. The word "condition" is used deliberately instead of "prerequisite," because the available evidence shows association rather than strict necessity. Guiso documents a strong positive correlation between the trust that small business owners place in insurers and the extent of their insurance coverage, and identifies customer satisfaction, which depends on the insurer's own conduct, as a key source of that trust.[25] Cross-country evidence likewise suggests that higher societal trust reduces information asymmetry between consumers and insurers.[26] The point is not new to economics. Akerlof already treated guarantees as institutions that counteract quality uncertainty, and observed that where such guarantees are indefinite, business suffers.[27] More recent household evidence from China, framed in terms of contract incompleteness, identifies the policyholder's fear that the insurer will interpret terms against it, evade responsibility, or default outright as the source of a gap between insurance demand and actual participation.[28]

It is useful to distinguish two dimensions of trust. Institutional trust concerns whether the insurer will still exist and be able to pay, and it depends on solvency regulation, supervision, resolution, and guarantee schemes. Contractual trust concerns whether the insurer will treat the policyholder fairly within an existing contract, and it depends on disclosure, claims handling, good faith, and the rules on cancellation. Guiso emphasizes that insurance is a two-sided trust exchange: the insurer must trust that the insured will not misrepresent or inflate claims, while the insured must trust that the insurer will not deny a claim that is honestly made. When an insurer distrusts a claim and delays payment to investigate it, the delay itself lowers the client's trust in the insurer.[29] He also notes an important asymmetry: a breach of trust by the insurer is judged more harshly by society than a breach by the client, because the insurer is the more powerful party.[30] This distinction explains why the financial-sector reform and the Constitutional Court decision operate at different levels. The Policy Guarantee Program addresses institutional trust, while Decision No. 83/PUU-XXII/2024 addresses contractual trust. The emphasis on institutions is deliberate. Cao, Gong, and Zheng find that interpersonal trust cannot support risk control at the scale of a national insurance market, whereas institutional trust can,

[25] Guiso, "Trust and Insurance," 510.

[26] Tao Sun, *Societal Trust, Risk Avoidance and Corporate Risk Taking: Evidence from the Global Insurance Industry*, *Geneva Papers on Risk and Insurance: Issues and Practice*, vol. 46 (Palgrave Macmillan UK, 2021), https://doi.org/10.1057/s41288-020-00195-2.

[27] Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," 499–500.

[28] Xiao Cao, Xiaomin Gong, and Andi Zheng, "Trust and Commercial Insurance Participation: An Incomplete Contract Perspective," *International Review of Economics and Finance* 102, no. December 2024 (2025): 104301, https://doi.org/10.1016/j.iref.2025.104301.

[29] Guiso, "Trust and Insurance," 510.

[30] Guiso, 511.

because it carries enforcement and supervisory functions that shape participants' expectations.[31]

### 3.2. The Penetration Gap as a Trust Deficit

Empirical research identifies several demand-side determinants of insurance ownership. Studies in Indonesia link financial literacy and risk attitude to life-insurance ownership,[32] and a survey of respondents in major Indonesian cities finds that trust in insurers and key institutions, together with financial literacy and risk aversion, significantly shapes life-insurance demand.[33] Other studies relate income, premium level, and brand image to the decision to use insurance services.[34] International evidence is consistent. Using a measure developed by the Italian insurance supervisor, Bongini, Cucinelli, and Soana find that insurance literacy is a significant positive determinant of holding insurance products.[35] Household data from the United States show that wealth, subjective expectations, liquidity constraints, and financial literacy jointly shape both insurance and portfolio decisions.[36] Household data from China show that income volatility increases the willingness to allocate resources to commercial insurance.[37]

Literacy, however, does not fully explain the Indonesian data. The 2025 survey shows literacy well ahead of inclusion, which suggests that some people who understand the product still decline to buy it. A plausible explanation, which this article advances as a hypothesis, is that the expected value of the insurance promise is discounted by the perceived risk that the promise will not be kept. Consumers are known to react strongly to contract nonperformance risk.[38] Research on alternative dispute resolution cases in Finland adds a further point: many disputes arise from a mismatch between the coverage consumers expected and the coverage the contract provides, and post-purchase

[31] Cao, Gong, and Zheng, "Trust and Commercial Insurance Participation: An Incomplete Contract Perspective," 14.

[32] Cindy Wahono and Pwee Leng, "Pengaruh Literasi Keuangan Dan Risk Attitude Terhadap Kepemilikan Asuransi Jiwa," *Jurnal Administrasi Bisnis* 18, no. 1 (July 30, 2022): 17–35, https://doi.org/10.26593/jab.v18i1.5471.17-35.

[33] Miranda Tanjung and Merry Cahyanti, "Demand for Life Insurance and the Influence of Consumer's Financial Literacy, Risk Aversion and Trust," *International Journal of Pharmaceutical and Healthcare Marketing* 19, no. 4 (2025): 1142–63, https://doi.org/10.1108/IJPHM-01-2024-0002.

[34] Nurhayati Aziz Kasyfil, Syafri, "Pengaruh Pendapatan, Harga (Premi), Dan Citra Merek Terhadap Keputusan Menggunakan Jasa Asuransi," *Jurnal Ekonomi Trisakti* 4, no. 1 (2024): 319–30, https://doi.org/10.25105/jet.v4i1.18661.

[35] Bongini, Cucinelli, and Soana, "Insurance Holdings: Does Individual Insurance Literacy Matter?," 104511.

[36] Olivier Armantier, Jérôme Foncel, and Nicolas Treich, "Insurance and Portfolio Decisions: Two Sides of the Same Coin?," *Journal of Financial Economics* 148, no. 3 (2023): 201–19, https://doi.org/10.1016/j.jfineco.2023.03.003.

[37] Wei Guo, "Income Volatility and Household Commercial Insurance Allocation," *Finance Research Letters* 66, no. January (2024): 105645, https://doi.org/10.1016/j.frl.2024.105645.

[38] Jaspersen, Peter, and Ragin, *Probability Weighting and Insurance Demand in a Unified Framework*, 48:64.

misunderstandings are interpretive rather than merely cognitive.[39] Literacy programs cannot remove the legal risk that an insurer will invoke an ambiguous clause to avoid payment.

In Indonesia, nonperformance risk has taken two concrete forms. The first is institutional failure. The defaults of Jiwasraya, AJB Bumiputera 1912, Kresna Life, and Wanaartha Life reduced public confidence in insurance products and, according to Ridwan and Gultom, also affected the industry's investment flows.[40] Before the financial-sector reform, policyholders of a failed insurer were positioned as creditors whose recovery depended on a slow and uncertain liquidation process.[41] They also lacked standing to file for suspension of debt payment against an insurer, because that right belongs only to OJK.[42] Law No. 2 of 1992 contained no guarantee scheme, and Law No. 40 of 2014 required every insurer to participate in a policy guarantee program and ordered the enactment of a statute on that program within three years.[43] That deadline lapsed in 2017, leaving the risk of insurer failure with policyholders until Law No. 4 of 2023.

The second form is contractual nonperformance. Before Decision No. 83/PUU-XXII/2024, Article 251 of the Commercial Code was widely invoked to treat coverage as void when an insured made an inaccurate statement, without requiring proof of intent. Judicial practice was inconsistent. In some cases the Supreme Court required the insurer to seek annulment through the court and held that an insurer which accepted premiums without investigating the disclosed facts could not later rely on Article 251 to avoid payment. In other cases the Court applied the provision grammatically and treated the policy as void by operation of law.[44] Such inconsistency is itself a source of legal risk, because a policyholder cannot predict, at the time of purchase, how a future claim will be treated. Studies on Indonesian policyholders have therefore called for stronger consumer-protection institutions and for better governance and transparency in the insurance

[39] Aleksi Juhani Koivunen, "Identifying Insurance Literacy Knowledge Gaps across the Insurance Product Lifecycle: A Qualitative Thematic Analysis," *Journal of Financial Regulation and Compliance*, no. November (2026): 1–17, https://doi.org/10.1108/JFRC-02-2026-0074.

[40] Muhammad Ridwan and Elisatris Gultom, "Optimalisasi Peranan Pemerintah Dalam Perlindungan Hukum Terhadap Pemegang Polis Asuransi Guna Mencegah Terjadinya Gagal Bayar Oleh Perusahaan Asuransi," *Syntax Literate ; Jurnal Ilmiah Indonesia* 9, no. 11 (November 21, 2024): 6269–85, https://doi.org/10.36418/syntax-literate.v9i11.16920.

[41] Law No. 40 of 2014 on Insurance (Undang-Undang No.40 Tahun 2014 tentang Perasuransian), art. 52 para. (1); Gultom, "Menyoal Legal Standing Permohonan Penundaan Kewajiban Pembayaran Utang Oleh Pemegang Polis Asuransi." 80–81

[42] Gultom, "Menyoal Legal Standing Permohonan Penundaan Kewajiban Pembayaran Utang Oleh Pemegang Polis Asuransi," 93–94.

[43] Law No. 40 of 2014 on Insurance (Undang-Undang No.40 Tahun 2014 tentang Perasuransian). art. 53 paras. (1) and (4).

[44] Huda, "Good Faith in Life Insurance Contract by Indonesian Court," 53–56.

industry.[45] The penetration gap is thus better understood as a trust deficit, concerning both the insurer's solvency and the certainty and fairness of its treatment of policyholders.

### 3.3. Policy Guarantees: From Law No. 4 of 2023 to Law No. 4 of 2026

Philipus M. Hadjon distinguishes preventive protection, which aims to prevent disputes, from repressive protection, which aims to resolve disputes that have already occurred.[46] This distinction has been applied to contractual relationships in Islamic and conventional finance, where clear allocation of rights and obligations serves a preventive function and agreed dispute-resolution mechanisms serve a repressive one.[47] The Policy Guarantee Program is usually classified as repressive, but it also has an ex ante function, because its existence changes the expectations of policyholders and the incentives of insurers before any failure occurs.

Under Law No. 4 of 2023, the program was designed to protect policyholders, insured persons, or participants of insurers "whose business licenses are revoked due to financial difficulties."[48] Every conventional and sharia insurer must participate, pay an initial contribution and periodic contributions, and submit policy data to LPS.[49] The program covers only the protection element of insurance products in certain business lines, while social insurance and mandatory insurance programs are excluded.[50] The elucidation adds that the investment element attached to an insurance product is not guaranteed.[51] Under the original Article 84, the guarantee applied to active policies, through portfolio transfer or the return of policyholders' rights, and to policy claims "approved by the insurer

[45] Hasbi Tarmun and Henny Marlyna, "Implementasi Dan Penguatan Lembaga Perlindungan Konsumen Nasabah Asuransi," *Syntax Literate: Jurnal Ilmiah Indonesia* 8, no. 4 (2023): 3075–87, https://doi.org/10.36418/syntax-literate.v8i4.11739; et al., "Examining the Implementation of Insurance Law and Policies: A Study of Natural Disaster Risks, Policyholders, and Insurance Companies in Indonesia," *Indonesia Law Review* 13, no. 3 (2023), https://doi.org/10.15742/ilrev.v13n3.5.

[46] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia*, *Surabaya Bina Ilmu*, 1987.

[47] Ilham Abbas et al., "Business Agreements: Enhanced Investor Protection in Enterprises with Generation Z Consumers," *Al Adalah: Jurnal Hukum Dan Politik Islam* 9, no. 2 (2024): 127–40, https://doi.org/https://doi.org/10.30863/ajmpi.v9i2.6198.

[48] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). art. 79 para. (2).

[49] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). arts. 80–82 and 88.

[50] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). art. 83 paras. (1)–(2).

[51] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). Elucidation of art. 83 para. (1).

or LPS," through payment of guarantee claims.[52] The program was to take effect five years after the law was enacted, that is, in January 2028.[53]

Law No. 4 of 2026, enacted on 17 June 2026, changed the design of the program in four respects that are significant for this analysis. First, the purpose of the program was broadened. It now protects policyholders, insured persons, or participants from the failure of an insurer to meet its obligations due to financial difficulties, instead of being tied to the revocation of a business license.[54] Second, the program was integrated into a resolution regime. OJK now classifies insurers as under normal supervision, under recovery, or in resolution, and transfers the handling of an insurer in resolution to LPS.[55] LPS may decide whether to rescue such an insurer. If it decides not to do so, it may transfer assets and liabilities to a receiving or bridge insurer, pay the shortfall between transferred assets and liabilities, pay guarantee claims, return policyholders' rights, or manage existing contracts while stopping new business.[56] Third, LPS may transfer the liabilities of an insurer in resolution, together with its assets, without the consent of policyholders, insured persons, participants, creditors, or debtors.[57] Fourth, the priority of payments in liquidation was revised. Guarantee claims paid by LPS and the costs of transfers rank above taxes, while the unguaranteed portion of policyholders' rights ranks below taxes.[58] The implementation deadline of January 2028 was retained, while some of LPS's rescue powers will take effect only on 1 January 2030.[59]

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[52] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). art. 84 paras. (1)–(2).

[53] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). art. 329

[54] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 78 (art. 79 para. (2)).

[55] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 82 (art. 90 paras. (2) and (6)).

[56] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 81 (art. 84 para. (1)); General Elucidation, letter k.

[57] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 83 (art. 90B para. (1) letter b).

[58] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 87 (art. 98 para. (1)).

[59] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. II points 4–5

From an economic perspective, these changes move policyholder protection from fragmented post-default remedies toward an institutionalized protection architecture. The elucidation of the amended Insurance Law makes the expected mechanism explicit: the program is meant to raise public trust and thereby the willingness to use insurance.[60] This expectation is consistent with the economic finding that consumers discount insurance heavily when they fear nonperformance. A credible guarantee reduces that discount. Experimental evidence points in the same direction: in markets with asymmetric information, an insurance mechanism attached to the transaction increased both buyers' willingness to trade and sellers' cooperation.[61] In this sense, the program operates ex ante by lowering the perceived risk of the product, even if it is never triggered. The 2026 broadening of the program's purpose also matters for trust. A guarantee that applies only after license revocation leaves policyholders exposed during a long period of distress, whereas a guarantee linked to resolution can intervene earlier.

The same design, however, raises the familiar problem of moral hazard. A guarantee financed by industry contributions may weaken the incentive of shareholders and managers to maintain prudent risk-taking, and may reduce the incentive of policyholders to choose financially sound insurers. Law and economics scholarship on catastrophe insurance warns that a model in which the state simply bails out operators fails to stimulate market solutions, and that public backstops should be structured to preserve private incentives.[62] Evidence on guarantee funds is more direct. Lee, Mayers, and Smith show that after state guaranty funds were introduced in the United States, property-liability insurers shifted their portfolios toward riskier assets, but only stock insurers did so, because flat-rate assessments that do not vary with risk let owners capture the gains of risk-taking.[63] Cross-country evidence on deposit insurance adds that explicit guarantees tend to weaken stability where the institutional environment is weak, while good institutions allow supervisors to offset the loss of market discipline.[64] The Indonesian framework contains several devices that serve this purpose. Controllers, directors, and commissioners of participating insurers must state that they accept personal liability for negligence or unlawful acts that harm the company and that they will surrender their rights to LPS if the

[60] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). Elucidation of art. I point 75.

[61] Ben Grodeck et al., "To Insure or Not to Insure? Promoting Trust and Cooperation with Insurance Advice in Markets," *European Economic Review* 160, no. March 2022 (2023): 104586, https://doi.org/10.1016/j.euroecorev.2023.104586.

[62] He, Faure, and Liu, "The Possibilities and Limits of Insurance as Governance in Insuring Pandemics," 663.

[63] Soon Jae Lee, David Mayers, and Clifford W. Smith, "Guaranty Funds and Risk-Taking Evidence from the Insurance Industry," *Journal of Financial Economics* 44, no. 1 (1997): 3–24, https://doi.org/10.1016/S0304-405X(96)00007-4.

[64] Asli Demirgüç-Kunt and Enrica Detragiache, "Does Deposit Insurance Increase Banking System Stability?," *IMF Working Papers* 2000, no. 003 (January 2000): 22, https://doi.org/10.5089/9781451841893.001.

company enters resolution.[65] Former shareholders who are proven to have caused the failure must pay remaining obligations if the assets are exhausted.[66] Coverage is capped and limited to the protection element.[67] These devices keep shareholders as the first-loss bearers and keep a portion of risk with policyholders who choose investment-linked products. Whether they are sufficient depends on the guarantee limit, the contribution structure, and the effectiveness of supervision. The law authorizes LPS to set and collect periodic contributions but does not say whether they will reflect each insurer's risk.[68] The International Association of Insurance Supervisors (IAIS) recognizes risk-based contributions, together with coverage limits and sound supervision, as the main safeguards against moral hazard, while acknowledging that they are difficult to calibrate.[69] Malaysia offers a nearby model: its takaful and insurance benefits protection scheme must provide incentives for sound risk management, allows different levy rates for different categories of members, and calculates levies separately for family takaful, general takaful, life, and general business.[70] Since the Indonesian program also covers sharia insurers, a similar separation would prevent *tabarru'* contributions from subsidizing the risk-taking of conventional insurers.

The exclusion of the investment element deserves particular attention. Economically, it is defensible: a guarantee on investment returns would subsidize risk-taking and blur the boundary between insurance and asset management. Legally and behaviorally, however, it creates a risk of misunderstanding. Many Indonesian policyholders hold investment-linked products, and the disputes surrounding several insurer failures involved promised returns that were not delivered.[71] If policyholders believe that the guarantee covers the full value of such products, the program may create expectations that it cannot fulfill, and a subsequent disappointment could damage trust more than the absence of a guarantee would. European

[65] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 79 (art. 81 para. (1) letter a number 3).

[66] Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector (Undang-Undang Republik Indonesia Nomor 4 Tahun 2023 Tentang Pengembangan Dan Penguatan Sektor Keuangan). art. 98 para. (5).

[67] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. 85.

[68] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 6 (art. 6 para. (1) letter a of the Deposit Insurance Corporation Law as amended by art. 7 point 6 of Law No. 4 of 2023).

[69] International Association of Insurance Supervisors and (IAIS), "Issues Paper on Roles and Functioning of Policyholder Protection Schemes (PPSs)," 2023. paras. 89–91

[70] "Malaysia Deposit Insurance Corporation Act 2011" (2023). (Act 720), as at 21 July 2023, ss. 4(1)(c), 72(4), and 73(1)(f).

[71] Hazhin and Diaz, "Efektivitas Bentuk Perlindungan Hukum Terhadap Pemegang Polis Asuransi Jiwa Kresna Pasca Putusan Kasasi."

experience with the Insurance Distribution Directive suggests that adding procedural and disclosure requirements does not automatically improve consumer outcomes unless consumers actually understand what the rules provide.[72] The guarantee therefore needs to be accompanied by clear disclosure at the point of sale, which OJK Regulation No. 22 of 2023 already requires in general terms.[73]

### 3.4. Constitutional Reform of the Insurance Contract: Decision No. 83/PUU-XXII/2024

If the Policy Guarantee Program addresses the risk of insurer failure, Constitutional Court Decision No. 83/PUU-XXII/2024 addresses the risk that an operating insurer will avoid its obligations within the contract. The case was filed by Maribati Duha, a beneficiary under a life-insurance policy held by the late Sopan Santun Duha. The applicant argued that Article 251 of the Commercial Code allowed the insurer to act as judge in its own cause (*eigenrichting*) by cancelling a policy or reducing its benefit without any process of proof, and that this violated the principles of the rule of law, legal certainty, equality before the law, and protection of property under Articles 1 paragraph (3), 27 paragraph (1), 28D paragraph (1), 28G paragraph (1), and 28H paragraph (4) of the 1945 Constitution.[74]

Article 251 of the Commercial Code provides as follows:

> "All inaccurate or untrue notifications, or any concealment of circumstances known to the insured, even if made in good faith, which are of such a nature that the agreement would not have been entered into, or would not have been entered into on the same terms, had the insurer known the true circumstances, render the insurance void."

The Court did not strike down the provision. It declared Article 251 contrary to the 1945 Constitution and without binding legal force conditionally, unless interpreted as "including that the cancellation of coverage must be based on the agreement of the insurer and the insured or based on a court decision."[75] Some secondary sources reproduce this

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[72] M. Fras et al., *Determinants of the Behaviour of Entities on the Insurance Market in the Light of Changes Introduced by the IDD Directive*, *Journal of Consumer Policy*, vol. 47 (Springer US, 2024), https://doi.org/10.1007/s10603-024-09572-z.

[73] Zil Aidi, Maryam Khalid, and Pg Ismail Pg Musa, "Subject Matter Limitations in General Sharia Insurance: Comparative Lessons from Indonesia and Malaysia," *Law Reform: Jurnal Pembaharuan Hukum* 22, no. 1 (2026): 192–213, https://doi.org/10.14710/lr.v22i1.74352.

[74] Constitutional Court of the Republic of Indonesia, Decision No. 83/PUU-XXII/2024 on the Judicial Review of the Commercial Code against the 1945 Constitution (Putusan Nomor 83/PUU-XXII/2024 tentang Pengujian Kitab Undang-Undang Hukum terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945) at 449–51.

[75] Constitutional Court of the Republic of Indonesia, Decision No. 83/PUU-XXII/2024 on the Judicial Review of the Commercial Code against the 1945 Constitution (Putusan Nomor 83/PUU-XXII/2024 tentang Pengujian Kitab Undang-Undang Hukum terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945). 463. The original reads: "termasuk berkaitan dengan pembatalan pertanggungan harus didasarkan atas kesepakatan penanggung dan tertanggung atau berdasarkan putusan pengadilan."

formulation with "and" in place of "or." The authoritative text of the decision, both in the legal considerations and in the operative part, uses "or" (*atau*).[76] The distinction is legally decisive. Agreement and judicial determination are alternative routes, not cumulative requirements. An insurer may therefore cancel coverage on the ground of misrepresentation or non-disclosure if the insured agrees, and if no agreement is reached, cancellation requires a court decision. What the insurer can no longer do is declare coverage void unilaterally. The Court described the sequence in its reasoning: a dispute between the parties should first be settled by agreement or mediation, and only if that fails should a court determine, fairly and objectively, whether a misstatement or concealment exists and whether the agreement should be cancelled, with the court acting as the last resort.[77]

The Court's reasoning proceeds in several steps. First, it confirmed that the insurance contract remains subject to the general principles of contract law, namely consensualism, freedom of contract, *pacta sunt servanda*, and good faith, while recognizing that insurance is an aleatory contract that requires a heightened standard of utmost good faith (*uberrimae fidei*).[78] Second, it held that utmost good faith binds both parties. The Court referred to Article 31 of Law No. 40 of 2014, which requires insurers, agents, and brokers to act in good faith and to provide correct information, and stated that the insurer should not rely solely on the applicant's statements but should verify them with other evidence in order to mitigate risk.[79] Third, it observed that the insured is generally in the weaker position, both because of limited understanding of the protection to which he or she is entitled and because the terms are drafted in standard form in a way that benefits the insurer disproportionately.[80] Fourth, because Article 251 does not regulate how cancellation is carried out and addresses only the insured, it fails to provide fair legal protection and certainty, especially for the insured, and creates unfair legal uncertainty contrary to Article 28D paragraph (1) of the 1945 Constitution.[81] Finally, the Court noted that Article 251 is a product of the Dutch colonial legal order that has fallen behind contemporary social and legal needs.[82]

Why did a rule of private contract law become constitutionally reviewable? The answer lies in the nature of the rule. Article 251 is not a term chosen by the parties but a statutory default that allocates the consequences of an information failure. By allowing one party to determine unilaterally whether the contract survives, the provision converted an informational asymmetry into a legal power. That power affected the policyholder's

[76] Constitutional Court of the Republic of Indonesia, at 463–64.
[77] Constitutional Court of the Republic of Indonesia, at 462–63.
[78] Constitutional Court of the Republic of Indonesia, at 455–56.
[79] Constitutional Court of the Republic of Indonesia, at 456–58.
[80] Constitutional Court of the Republic of Indonesia, at 460.
[81] Constitutional Court of the Republic of Indonesia, at 461–63.
[82] Constitutional Court of the Republic of Indonesia, at 463.

property interest in premiums already paid and in the sum insured, and it did so without any guarantee of a fair hearing. Article 28D paragraph (1) was therefore engaged, not because the State interfered with the contract, but because its own legislation structured the contract so as to deny one party equal protection. The constitutional economic principle of "efficiency with justice" in Article 33 paragraph (4) provides a further lens. A rule that lowers the insurer's transaction costs by shifting the entire risk of honest error to the weaker party may be efficient in a narrow sense, but it is not efficient with justice. Cherednychenko distinguishes the subordination of private law to fundamental rights, where the constitutional court decides the outcome itself, from complementarity, where private law keeps the final word but must take constitutional values into account.[83] The German Constitutional Court's suretyship case, which protected a party in a situation of disturbed contractual parity, is the best-known example of the first tendency.[84] Decision No. 83/PUU-XXII/2024 is closer to complementarity: the Court did not decide which policies may be cancelled, but required that cancellation pass through agreement or a court.

Seen through law and economics, the decision is a constitutional reallocation of contractual risk. Before the decision, the policyholder bore three risks: the risk of honest error in disclosure, the risk that the insurer would discover an error only after a loss and use it to avoid payment, and the procedural risk of having to sue the insurer to recover. After the decision, the second and third risks are shifted toward the insurer. The insurer must either obtain agreement or persuade a court, which means that it carries the burden of initiating proceedings and proving its case. This reallocation is consistent with the doctrine of the reciprocal duty developed in Indonesian scholarship, under which the insured must disclose material facts (*mededelingsplicht*) and the insurer must investigate them (*onderzoeksplicht*).[85] It also corresponds to the insurance-economics insight that the insurer is usually better placed to screen risk at the underwriting stage than to correct mispricing through ex post cancellation.[86] Reciprocal good faith thus functions as a legal mechanism for reducing information asymmetry on both sides of the contract, not merely as a moral principle.

The reallocation is not costless. Insurers may respond by tightening underwriting, extending waiting periods, or pricing in litigation costs, which may raise premiums, particularly in microinsurance and digital channels that depend on simplified underwriting. Adverse selection may also increase if some applicants believe that misstatements will be harder to sanction. The decision's efficiency therefore depends on complementary rules.

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[83] Olha O. Cherednychenko, "Fundamental Rights and Private Law:<br> A Relationship of Subordination or Complementarity?," *Utrecht Law Review* 3, no. 2 (December 20, 2007): 1, https://doi.org/10.18352/ulr.45.

[84] Cherednychenko, 7–8.

[85] Huda, "Good Faith in Life Insurance Contract by Indonesian Court," 52–53, 56–57.

[86] Chaitra Vinayak, "Information Asymmetry in Insurance Contracts and 'the Weaker Party': Duty of Good Faith Disclosures in India," *The Journal of Risk Management and Insurance* 27, no. 1 (2023): 50–51.

India amended section 45 of its Insurance Act in 2015 so that a life policy cannot be questioned on any ground after three years from its issuance or the commencement of risk, while allowing the insurer to repudiate within that period on the ground of fraud or misstatement.[87] Indonesia has no equivalent time limit, so an insurer may still seek cancellation through the court many years after conclusion of the contract. The Constitutional Court, as a court reviewing statutes, was not in a position to set such a period itself. Conditional interpretations that prescribe detailed arrangements risk exceeding the Court's institutional role.[88] The design of a contestability period is therefore a task for the legislature or for OJK. Germany in 2008 and the United Kingdom in 2012 replaced the duty to volunteer all material facts with a duty to answer the insurer's questions, and replaced the "all or nothing" remedy with remedies proportionate to the policyholder's fault.[89] China adopted inquiry-based disclosure and limited rescission to intentional concealment or gross negligence.[90] The Indonesian decision secures the procedure of cancellation but leaves the all-or-nothing substance of Article 251 intact, so legislative reform remains necessary.

The decision also strengthens the position of the policyholder as a consumer. Article 4 of Law No. 8 of 1999 grants consumers the rights to accurate, clear, and honest information, to fair and non-discriminatory treatment, and to compensation. Article 18 prohibits standard clauses that transfer the business actor's responsibility or that give the business actor the right to reduce the benefit of the service unilaterally.[91] Indonesian scholarship has found that exemption clauses in standard electronic contracts frequently conflict with this provision.[92] Comparative law shows a similar trend. In *Ocidental* (Case C-263/22), the Court of Justice of the European Union held that a consumer who adheres to a group insurance contract as an insured person is a party protected by the Unfair Terms Directive.[93] Scholarship on standard terms argues that fairness review alone cannot restore genuine consent and that the structural conditions under which terms are drafted must also

[87] Vinayak, 52–53.

[88] Lukman Ansar, Sabar Podu, and Wira Kafryawan, "Restructuring Electoral Cycles : Remedial Calibration and Legislative Discretion in Indonesia ' s Constitutional Court Decision No. 135/PUU-XXII/2024," *Constitutional Law Review* 5, no. 1 (2026): 108–23, https://doi.org/10.30863/clr.v5i1.6029.

[89] Thi Nha Nam Bach, "Reforming the Duty of Disclosure: The Emerging Shift Towards Consumer Protection in Contemporary Insurance Law," *European Journal of Risk Regulation* 16, no. 4 (December 26, 2025): 1504–18, https://doi.org/10.1017/err.2025.10045.

[90] Bach, 1517.

[91] "Law No. 8 of 1999 on Consumer Protection (Undang-Undang Nomor 8 Tahun 1999Tentang Perlindungan Konsumen)" (1999). arts. 4 and 18 para. (1) letters a and f.

[92] Hana Salvia, Enni Priowirjanto, and Agus Suwandono, "Operator Responsibilities in Safeguarding Consumer Rights Against GPS Spoofing in Ride-Hailing Services," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 11, no. 2 (August 2024): 208–30, https://doi.org/10.22304/pjih.v11n2.a3.

[93] Vadim Mantrov, "Consumer Being a Party to the Group Insurance Contract Is Not Just a Silent Observer: The CJEU's Clarification in Ocidental," *European Journal of Risk Regulation* 15, no. 4 (2024): 1062–68, https://doi.org/10.1017/err.2024.50.

be regulated.[94] Decision No. 83/PUU-XXII/2024 thus changes the statutory default behind every policy, so that a cancellation clause drafted to reproduce the old Article 251 is no longer enforceable as a unilateral power.

The decision is likely to change policy wordings, but the direction of change is not automatic. Empirical work on standard-form contracts shows that drafters revise terms more readily when they can learn about their costs from experience, while terms that do not generate such feedback tend to remain unchanged.[95] A study of Taiwan's government-issued contract templates shows that firms generally adopt such templates but adapt them in ways that serve their own interests.[96] Voluntary revision by industry associations is therefore unlikely to be sufficient.

### 3.5. Reconfigured Protection and Market Trust: Complementarity, Overlap, and Tension

Accordingly, policyholder protection after the financial-sector reform and the Constitutional Court decision can be understood as layered protection. Table 1 summarizes four layers: contractual protection through policy terms and contract law; regulatory protection through market-conduct rules and OJK supervision; judicial and constitutional protection, which now channels cancellation disputes into agreement, mediation, the Financial Services Sector Alternative Dispute Resolution Institution (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan*, LAPS SJK), or the courts; and institutional protection through the Policy Guarantee Program and insurer resolution.

**Table 1. Layered Architecture of Policyholder Protection in Indonesia**

| Layer | Main legal basis | Risk addressed | Main economic function |
|---|---|---|---|
| Contractual | Civil Code arts. 1320, 1338; Commercial Code arts. 246, 251; policy terms | Mispricing and disclosure failure | Allocates risk between the parties ex ante |
| Regulatory (preventive) | Law No. 40 of 2014 art. 31; Law No. 8 of 1999 arts. 4, 18; OJK Regulation No. 22 of 2023 | Information asymmetry and unfair standard terms | Lowers search and verification costs; supports contractual trust |
| Judicial and constitutional | Decision No. 83/PUU-XXII/2024; LAPS SJK; courts | Unilateral cancellation and opportunistic claim denial | Shifts ex post contractual risk to the insurer; supports contractual trust |

[94] F Möslein, "Digitized Terms: The Regulation of Standard Contract Terms in the Digital Age," *European Review of Contract Law* 19, no. 4 (2023): 300–320, https://doi.org/10.1515/ercl-2023-2019; Cumyn, "Standard Form Contracts and the Erosion of Consent: Is There No Turning Back?," 160–63.

[95] Giuseppe Dari-Mattiacci and Florencia Marotta-Wurgler, "Learning in Standard-Form Contracts: Theory and Evidence," *Journal of Legal Analysis* 14, no. 1 (September 1, 2022): 244–45, https://doi.org/10.1093/jla/laad001.

[96] Christopher Chao Hung Chen, "Regulating Consumer Contracts with Government-Made Templates: An Examination of Taiwan's Approach to Boilerplate Forms," *Asian Journal of Comparative Law*, 2025, 98–99, https://doi.org/10.1017/asjcl.2025.10009.

| Layer | Main legal basis | Risk addressed | Main economic function |
|---|---|---|---|
| Institutional | Law No. 4 of 2023 as amended by Law No. 4 of 2026, arts. 79–103 | Insurer failure (nonperformance by insolvency) | Reduces nonperformance discount; supports institutional trust; requires moral-hazard controls |

***Source**: Authors' analysis of the legal materials.*

The layers are largely complementary. The constitutional layer protects the policyholder while the insurer is solvent but acting opportunistically, and the institutional layer protects the policyholder when the insurer is no longer able to pay. Together they reduce both forms of nonperformance risk identified earlier. The alternative dispute resolution layer is also important, because LAPS SJK offers a final and binding process that is shorter and less costly than litigation.[97] If cancellation disputes after the decision are channeled efficiently through mediation and LAPS SJK, the additional transaction costs created by the decision can be kept moderate.

The layers, however, are not yet integrated, and at least five points of friction can be identified. The first concerns disputed claims. Under the original Article 84 of Law No. 4 of 2023, the program pays claims "approved" by the insurer or LPS. After the Constitutional Court decision, an insurer can no longer unilaterally void a policy, but it can still contest a claim. If the insurer enters resolution while a dispute about cancellation is pending before LAPS SJK or a court, it is unclear whether the claim is treated as guaranteed, unguaranteed, or suspended. The amended Article 84 refers simply to "payment of guarantee claims on insurance policy claims" and leaves the details to a Government Regulation.[98] That regulation should state how LPS will treat claims that are disputed on grounds of misrepresentation. The second concerns policies cancelled before the decision. Decisions of the Constitutional Court acquire binding force when pronounced and, as a rule, operate prospectively.[99] Policies that insurers treated as void under the old reading before 3 January 2025 are therefore not automatically revived. Policyholders in that position must rely on ordinary civil remedies, and implementing guidance would reduce uncertainty for both sides.

The third point concerns the priority of claims. The revised Article 98 places guarantee payments by LPS above taxes but places the unguaranteed portion of policyholders' rights, including the investment element and amounts above the guarantee

[97] Setiyono et al., "The Establishment of LAPS SJK in the Trajectory of History Viewed from the Politics of Indonesian Law," *Jurnal Hukum Novelty* 15, no. 1 (2024): 121–22, https://doi.org/10.26555/novelty.v15i1.a28385.

[98] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023).

[99] "Law No. 24 of 2003 on the Constitutional Court as Last Amended by Law No. 7 of 2020 (Undang-Undang Nomor 24 Tahun 2003 Tentang Mahkamah Konstitusi Sebagaimana Terakhir Diubah Dengan Undang-Undang Nomor 7 Tahun 2020)" (2003). art. 47

limit, below taxes.[100] This ordering protects the guarantee fund, but it sits uneasily with Article 52 of Law No. 40 of 2014, which gives policyholders a position higher than other parties in the distribution of a bankrupt or liquidated insurer's assets.[101] The relationship between the two provisions should be clarified, preferably by stating that the higher position under the Insurance Law applies to the portion of policyholders' rights that is not guaranteed. The fourth point concerns consent. The Constitutional Court grounded its decision in the principle that cancellation of an insurance contract requires either the agreement of the parties or a court decision. Article 90B of the amended law, by contrast, allows LPS to transfer policies to another insurer without the policyholders' consent. The two rules address different situations, individual cancellation and collective resolution, and the latter can be justified by the public interest in rapid and orderly resolution. The European Insurance and Occupational Pensions Authority (EIOPA) treats the continuation of policies through portfolio transfer as a function of a guarantee scheme equal in value to the payment of compensation.[102] Nevertheless, a policyholder who has a pending dispute with the failed insurer should not lose the procedural protection secured by the Constitutional Court merely because the policy has been transferred. Implementing regulations should confirm that the receiving insurer takes over the contract subject to the same limits on cancellation.

The fifth point concerns products that combine protection and investment components. These products sit at the intersection of all four layers. Their investment element is excluded from the guarantee, their cancellation is now subject to the decision, and their complexity increases the risk of misunderstanding. Research on regulatory clarity in Indonesian sharia insurance shows that uncertainty in the scope of what is covered can erode consumer trust.[103] Research on halal regulation reaches a similar conclusion about the effect of inconsistent definitions across regulations.[104] For investment-linked insurance, therefore, a single disclosure document should explain which part of the policy is guaranteed, up to what limit, and how coverage can be cancelled. Without this, the layered architecture may be complete on paper but opaque to the person it is meant to protect.

Finally, the possibility of overlap between protection layers must be considered. Excessive layering may itself produce moral hazard if policyholders believe that every loss

[100] Law No. 4 of 2026 on the Amendment to Law No. 4 of 2023 on the Development and Strengthening of the Financial Sector ( Undang-Undang Nomor 4 Tahun 2026 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2023). art. I point 87 (art. 98 para. (1) letters d–g).

[101] Law No. 40 of 2014 on Insurance (Undang-Undang No.40 Tahun 2014 tentang Perasuransian). art. 52 para. (1)

[102] European Insurance and Occupational Pensions Authority, "Opinion on the 2020 Review of Solvency II" (Frankfurt, 2020). para. 13.4.

[103] Aidi, Khalid, and Musa, "Subject Matter Limitations in General Sharia Insurance: Comparative Lessons from Indonesia and Malaysia," 204–5.

[104] Deviana Yuanitasari, Agus Sardjono, and Heru Susetyo, "The Implications of Halal Regulations in Indonesia: A Consumer Protection's Legal Perspective," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 11, no. 3 (December 2024): 385–404, https://doi.org/10.22304/pjih.v11n3.a4.

will be covered by someone. The IAIS notes, however, that such moral hazard arises only for policyholders able to assess an insurer's financial strength, and that no jurisdiction has shown it to result from schemes with reasonable coverage limits.[105] The present design avoids this to a significant extent, because the guarantee is capped and limited to protection, and because the constitutional rule does not excuse fraudulent misrepresentation. Regulatory disharmony is, however, a recurring weakness in Indonesian economic law, where the effectiveness of a reform often depends less on the statute itself than on the coherence of its implementing rules.[106] The decisive period for the architecture described here is therefore the time before January 2028, when the Government Regulations on the guarantee limit, covered business lines, and implementation mechanisms must be issued.

From the perspective of penetration, guarantees and procedural safeguards will improve confidence only if policyholders understand their scope and limits. Both the IAIS and EIOPA therefore treat clear public disclosure of coverage limits as part of the design of a guarantee scheme, not as an afterthought.[107] Studies on digital insurance and open insurance show that consumers value transparency-enhancing services and continue to place greater trust in established insurers and public institutions than in new entrants.[108] This suggests that the institutional role of LPS and the judicial role of the courts may themselves become sources of trust, provided that they are visible and predictable. Whether these reforms will raise participation remains a hypothesis to be tested once the program is operating

## 4. Conclusion

Based on the discussion above, three conclusions can be drawn about how insurance protection in Indonesia has been reconfigured. First, the financial-sector reform under Law No. 4 of 2023, as amended by Law No. 4 of 2026, moves policyholder protection from fragmented post-default remedies toward an institutionalized protection architecture. The Policy Guarantee Program reduces the institutional risk of insurer failure that policyholders

[105] International Association of Insurance Supervisors and (IAIS), "Issues Paper on Roles and Functioning of Policyholder Protection Schemes (PPSs)." para. 47

[106] Hilmiah, Ilham Nugraha, and Muhammad Fitratallah, "Regulatory Disharmony and Local Government Roles in the Planned Development of the Barru Special Economic Zone : An Economic Law," *Constitutional Law Review* 5, no. 1 (2026): 47–71.

[107] International Association of Insurance Supervisors and (IAIS), "Issues Paper on Roles and Functioning of Policyholder Protection Schemes (PPSs)" para. 99 ; European Insurance and Occupational Pensions Authority, "Opinion on the 2020 Review of Solvency II." paras. 13.23–13.25.

[108] Gian Florin and Martin Eling, "Open Insurance: Consumer Preferences, Trust, and Willingness to Pay," *Geneva Papers on Risk and Insurance: Issues and Practice*, 2026, https://doi.org/10.1057/s41288-026-00391-6; Christian Eckert, Christof Neunsinger, and Katrin Osterrieder, *Managing Customer Satisfaction: Digital Applications for Insurance Companies*, *Geneva Papers on Risk and Insurance: Issues and Practice*, vol. 47 (Palgrave Macmillan UK, 2022), https://doi.org/10.1057/s41288-021-00257-z.

previously bore almost entirely, and its existence may lower the discount that consumers apply to an uncertain insurance promise. Its effectiveness, however, depends on implementing regulations that have not yet been issued, and on controls against moral hazard, including the guarantee limit, the exclusion of the investment element, and the liability of shareholders and managers.

Second, Constitutional Court Decision No. 83/PUU-XXII/2024 is best understood as a constitutional reallocation of contractual risk. Before the decision, the policyholder bore the risk of honest disclosure errors, the risk that the insurer would rely on such errors after a loss to avoid payment, and the procedural burden of challenging that action. After the decision, an insurer may cancel coverage only on the basis of the insured's agreement or a court decision, which are alternative routes under the authoritative operative wording. The decision gives legal force to the doctrine of reciprocal good faith and strengthens contractual trust. Its potential costs for underwriting and dispute administration are real, but they can be contained through efficient alternative dispute resolution and a clear contestability period.

Third, the two instruments form a largely complementary but not yet integrated layered protection architecture. Concrete gaps remain in the treatment of disputed claims within the guarantee scheme, the status of policies cancelled before 3 January 2025, the relationship between the priority rule in the amended Article 98 and Article 52 of the Insurance Law, the transfer of policies without consent during resolution, and the disclosure of guarantee limits in products that combine protection and investment components. Market trust, in the sense used in this article, depends on closing these gaps, because institutional trust and contractual trust reinforce each other only when the layers that produce them are aligned.

Based on these conclusions, the following normative recommendations are made. The Government and LPS should issue the implementing regulations on the Policy Guarantee Program before January 2028 and should expressly regulate the treatment of claims disputed on the ground of misrepresentation. OJK should issue guidance on cancellation, disclosure, and claims-handling clauses that comply with the Constitutional Court decision, including a contestability period, inquiry-based disclosure, and remedies proportionate to the policyholder's fault, and should monitor how insurers revise their standard policies. LPS should consider risk-based periodic contributions, calculated separately for conventional and sharia insurers. Lawmakers should clarify the relationship between the priority rules in the financial-sector law and in the Insurance Law. The effects of these reforms on penetration, disputes, and compliance costs should be tested in future empirical research.

## 5. CRediT authorship contribution statement

**Surya Hamdania:** Conceptualization, Methodology, Investigation, Formal analysis, Writing – original draft, Writing – review & editing.

**Annisa Danti Avrilia Ningrum**: Conceptualization, Methodology, Validation, Writing – review & editing.

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