

THE URGENCY OF PROFESSIONAL INDEMNITY INSURANCE IN RESEARCH AND INNOVATION PRACTICES IN INDONESIA

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ABSTRACT

This study explores the importance of legal protection for researchers in Indonesia, particularly in the context of professional indemnity insurance. It highlights the risks faced by researchers in their work, such as potential failures in research and innovation, and examines the legal framework that mandates protection for researchers under Indonesian law. Despite the legal provisions, the study identifies a gap in the implementation of protective policies, which hinders the effective safeguarding of researchers' rights. By comparing best practices from developed and developing countries, the research offers insights into how Indonesia can improve its legal protection for researchers, emphasizing the potential role of professional insurance as a viable solution.

KEYWORDS

Legal Protection, Professional Indemnity Insurance, National Science and Technology Law



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INTRODUCTION

Humans can never know the future because it is still covered by a veil of uncertainty. For this reason, humans must be prepared to face various bad things or risks that may occur in the future. In the wake of this development, an insurance system was implemented to protect individuals and businesses from unforeseen dangers and losses. Insurance certainly has no power to prevent these bad risks from occurring. However, insurance can overcome the negative impact of this risk. Insurance can replace losses arising from the occurrence of these risks. For example, in life insurance, of course, insurance cannot prevent someone from dying.

How to cite: Yanti Permatasari et al. (2024). The Urgency of Professional Indemnity Insurance in Research and Innovation Practices in Indonesia. *Journal Eduvest*. 4 (7): 5559-5576
E-ISSN: 2775-3727
Published by: <https://greenpublisher.id/>

However, life insurance can replace some of the financial losses that arise from someone's death, namely the loss of a source of income for the family left behind, so that the family left behind can continue their life as they should.

The form of insurance is in the form of a written protection agreement between the insurance company and the policy owner or called a policy. The policy owner is obliged to pay a certain amount of money to the insurance company periodically called a premium. Then as a counter-performance, the insurance company provides full guarantees to the policy owner if the agreed risk occurs. For this reason, the premium that has been submitted by the policy owner with a nominal value according to the policy will be developed by the insurance company until it reaches the amount that is expected to be sufficient to cover the entire insurance value of the policy owner. Insurance matters are regulated in full in Chapter IX of the Indonesian Commercial Code. Apart from that, insurance matters have also been regulated separately in Law Number 40 of 2014 concerning Insurance ("Insurance Law").

Insurance plays an important role in protecting people of a commercial and non-commercial nature. One type of insurance product that is developing in society is professional liability insurance or what is called professional indemnity insurance. Professional insurance is usually intended to cover economic losses due to failure of professional services, for example, the profession of doctors, contractors/sub-contractors, or employees. The professions protected by this insurance can vary, from accountants, judges, doctors, and other professional employees, including the research profession.

As an illustration, apart from having the potential to be successful, research also has the potential to fail in implementing research and innovation activities. Apart from that, researchers also have the potential to experience work accidents, for example, death or damage to body organs that deep sea researchers face.¹ Another example is faced by archaeological researchers who research the origins of human civilization in the Bintang Mountains, Papua,² which is the location of the separatist movement of the Free Papua Organization. Various factors that constitute work risks can cause discomfort for researchers because they do not fulfill a sense of security, which is one of the basic human needs, as stated in the Needs & Theory of Motivation proposed by Abraham Maslow.³

On the other hand, Articles 57 and 58 of Law Number 11 of 2019 concerning the National System of Science and Technology ("National Science and

¹ Badan Riset dan Inovasi Nasional, "Selain Untuk Pemanfaatan Sumber Daya Laut Dalam, Eksplorasi Perlu Dilakukan Untuk Mengetahui Potensi Bahaya," November 25, 2022, <https://www.brin.go.id/news/110911/selain-untuk-pemanfaatan-sumber-daya-laut-dalam-eksplorasi-perlu-dilakukan-untuk-mengetahui-potensi-bahaya>.

² M. Irfan Mahmud and Hari Suroto, "Kajian Arkeologi Kewilayahan Papua: Hasil-Hasil, Strategi Dan Prospek," *Jurnal Penelitian Arkeologi Papua Dan Papua Barat* 4, no. 1 (June 3, 2017): 5, <https://doi.org/10.24832/papua.v4i1.71>.

³ Ioan Constantin Dima, Mariana Man, and Sebastian Kot, "Use of Abraham Maslow's Motivation Theory for Setting Consumers' Satisfaction-Non-Satisfaction," *Polish Journal of Management Studies* 2, no. 2 (December 30, 2010): 133, <https://pjms.zim.pcz.pl/resources/html/article/details?id=187086&language=en>.

Technology Law”), as the main legal basis for various aspects of research and innovation, have mandated the Indonesian government to involve, protect and provide clear rights and obligations for researchers. These articles provide a legal basis for safeguarding researchers' intellectual property rights, copyrights, and patent rights so that they can calmly and safely make real and optimal contributions to scientific and technological progress without fear of feeling cheated, unappreciated, or afraid of the risk of work accidents that lie before them.

The problem that has emerged is that there has been no derivative policy implemented by the government as directed and mandated by Articles 57 and 58 of the National System of Science and Technology Law. This results in the legal ideals outlined in Articles 57 and 58 of the National System of Science and Technology Law to protect researchers which cannot be implemented effectively. This research aims to provide valuable insight to policymakers so that they can immediately protect researchers as mandated by Articles 57 and 58 of the National System of Science and Technology Law, which is realized in the form of research professional insurance.

Previous research on professional insurance was conducted by Jiayuan Wang et al. and Khairunnisa Noor Asufie et al. The two studies have different areas of focus and subjects. Wang researched the obstacles in implementing professional liability insurance schemes for engineers in China, one of which is the obstacles posed by laws and regulations.⁴ Meanwhile, Asufie's research focuses on the importance of the need for insurance protection for the Notary profession in Indonesia, namely as a way of transferring risks in the form of legal protection for Notaries in carrying out their office.⁵ The novelty of this research lies in examining the extent to which researchers' rights to legal protection against potential risks in research and innovation activities are fulfilled, as mandated in Articles 57 and 58 of the National System of Science and Technology Law.

RESEARCH METHOD

This research was carried out using a normative-juridical method, namely legal research carried out by examining library materials or secondary data.⁶ The research focuses on the norms inside a statute-regulation that led to selecting the normative juridical methodology as the appropriate method to apply. The first part of this research consists of conducting a study and analysis of the guarantee of legal protection rights for Indonesian researchers, and the efforts that the State can take to make this happen. This article focuses on Professional Insurance, especially for researchers. This research uses examples of legal protection practices for

⁴ Jiayuan Wang, Jian Liu, and Liyuan Huang, “Study on the Professional Liability Insurance System of the Supervision Engineer in China,” *Construction Management and Economics* 25, no. 7 (July 2007): 801–10, <https://doi.org/10.1080/01446190601139891>.

⁵ Khairunnisa Noor Asufie, Yulia Qamariyanti, and Rachmadi Usman, “Penggunaan Asuransi terhadap Risiko Pelaksanaan Jabatan Notaris,” *Lambung Mangkurat Law Journal* 5, no. 2 (September 30, 2020): 164–79, <https://doi.org/10.32801/lamlaj.v5i2.186>.

⁶ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif : Suatu Tinjauan Singkat*, Cetakan ke-17 (Jakarta: Raja Grafindo Persada, 2015), 34.

researchers in other countries to provide a reference point for policymakers. Legal provisions regulated in statutory regulations and legal aspects of contracts are the focus of investigations carried out to explore the characteristics of professional insurance plans.

The data collection approaches include searching for documents and conducting research at libraries. Primary data will be collected for the study, which will then be used to analyze and evaluate numerous factors related to insurance legislation. These aspects will include laws, rules, and agreements. For this study, the author wants to use secondary data comprising legal and non-legal sources.⁷ Statutory rules, such as the Indonesian Civil Code, the Indonesian Commercial Code, Law Number 40 of 2014 concerning Insurance ("Insurance Law"), and National Science and Technology Law are the critical legal materials that were utilized in this study. The secondary legal resources used in this inquiry include a wide variety of scholarly literature, which may take the form of books, journals, or legal research findings connected to the matter that was the subject of the investigation. Tertiary legal materials include legal dictionaries, electronic mass media articles, and other required reading materials. These tertiary legal materials are in addition to primary and secondary legal materials.

RESULT AND DISCUSSION

Guarantee of Legal Protection Rights for Indonesian Researchers

Article 57 of the National System of Science and Technology Law places the position of Indonesian researchers as an important subject that deserves serious protection from the state. Article 57 of the National System of Science and Technology Law also reflects the state's recognition of the key role of researchers in the development of science and technology. The provisions of Article 57 of the National System of Science and Technology Law also impose an obligation on the Government as the owner of the Government authority to immediately formulate clear and comprehensive regulations to ensure adequate legal protection for researchers.

From a human rights perspective, referring to Article 28 C paragraph (1) of the Constitution of the Republic of Indonesia,⁸ Article 57 of the National System of Science and Technology Law as per the principles of the right to develop science and technology as well as researchers' intellectual property rights. Thus, Article 57 is not just legal protection, but is also a real step in supporting the existence and positive contribution of researchers to the progress of society and the development of Indonesian science and technology. Article 57 also creates a solid foundation to ensure that researchers can carry out their roles safely and with respect in the context of the national system of science and technology.

Article 57 of the National System of Science and Technology Law establishes a strong basis that Indonesian researchers have the right to obtain legal protection

⁷ Ade Mahmud, "Kualifikasi dan Implikasi Menghalangi Proses Peradilan Tindak Pidana Korupsi," *Law Review XXI*, no. 1 (July 2021): 7, <http://dx.doi.org/10.19166/lr.v0i0.3323>.

⁸ Franciscus Xaverius Wartoyo, "Tanggung Jawab Hukum Pemerintah Dalam Penyelenggaraan Pendidikan Nasional," *Yustisia Jurnal Hukum* 5, no. 1 (April 1, 2016): 217, <https://doi.org/10.20961/yustisia.v5i1.8734>.

in the form of social implementation and legal assistance. These two forms of legal protection are important things that must be realized by the state and must be further regulated through separate statutory provisions.

Comparison of Other Countries Best Practices of Models of Legal Protection for Researchers

Models of legal protection for researchers can vary from one country to another, this depends on the legal system, government policies, and applicable legal culture.

Model of Legal Protection for Researchers in Developed Countries

In economically developed countries such as the United States, there is a legal system that tends to be more advanced and structured, including in terms of legal protection for researchers. This is characterized by the existence of clear regulations and laws relating to the rights and obligations of researchers, including in terms of intellectual property rights and data security. Professional insurance is generally more common and more integrated into research and innovation practices, apart from this some independent institutions and organizations monitor and enforce standards of ethics and professionalism among researchers.

Legal protection for researchers in the United States generally involves several integrated aspects, including intellectual property rights, data protection, ethical regulations, and a complex legal system. Some concrete examples of legal protection for researchers in the United States that can be summarized include:

Intellectual Property Rights (IPR)

Researchers in the United States are protected by strong intellectual property laws, such as patents, copyrights, and trademarks. It provides legal protection for innovations, written works, and discoveries produced by researchers. Protection of IPR is important to maintain the amount of investment and effort spent on the product. Obtaining a patent in the US is not easy and requires a lot of effort, coordination, and time. For biotechnology-related discoveries, the entire process from start to finish may take up to five years or more.⁹

Institutional Review Boards (IRB)

Research institutions in the United States typically have IRBs tasked with reviewing and approving research proposals involving human subjects.¹⁰ The main goal is to protect the rights and welfare of research subjects.

⁹ Alice Yuen-Ting Wong, Julie Ming Chu Lai, and Albert Wai-Kit Chan, "Regulations and Protection for Functional Food Products in the United States," *Journal of Functional Foods* 17 (August 2015): 546, <https://doi.org/10.1016/j.jff.2015.05.038>.

¹⁰ Christine Grady, "Institutional Review Boards," *Chest* 148, no. 5 (November 2015): 1148, <https://doi.org/10.1378/chest.15-0706>.

Data protection and privacy

Laws such as the Health Insurance Portability and Accountability Act (HIPAA) and the Family Educational Rights and Privacy Act (FERPA) provide legal protection for personal data collected in the context of health or educational research.¹¹

Whistleblower Protection

Federal laws such as the Whistleblower Protection Act protect researchers who report violations of law or fraud within research organizations or government agencies, especially considering that integrity is the first aspect that must be upheld in the conduct of research.¹²

Structured Legal System

In the United States, there is a strong and structured legal system that allows researchers to resolve disputes, protect their rights, and enforce their contracts or patents in court. Patent holders may file claims in Federal court for claims held by others, as provided in 35 U.S. Code § 315 concerning Relation to other proceedings or actions.¹³

Professional Insurance

Many researchers in the United States obtain professional insurance to protect themselves from lawsuits that may arise as a result of errors or omissions in their research practices. The Medicare program launched by President Clinton in 2000 even protects the conduct of clinical trials on patients receiving treatment for cancer, although only in several states, including Alaska, California, Florida, Indiana, Maryland, Michigan, Montana, New Mexico, North Carolina, Texas, Vermont, and West Virginia.¹⁴

Legal protection for researchers in the United States covers a variety of aspects designed to protect the rights, safety, and welfare of researchers, as well as ensure the integrity of research and innovation.

Model of Legal Protection for Researchers in Developing Countries

In developing countries, models of legal protection for researchers may be more varied and depend on the level of development of the legal system and national policies. Legal protection for researchers tends to be more limited and

¹¹ Dalia Topelson et al., "Privacy and Children's Data - An Overview of the Children's Online Privacy Protection Act and the Family Educational Rights and Privacy Act," *Berkman Center Research Publication* 23 (2013): 3, <https://doi.org/10.2139/ssrn.2354339>.

¹² Lex M. Bouter and Sven Hendrix, "Both Whistleblowers and the Scientists They Accuse Are Vulnerable and Deserve Protection," *Accountability in Research* 24, no. 6 (August 18, 2017): 360, <https://doi.org/10.1080/08989621.2017.1327814>.

¹³ Endang Purwaningsih, "Patent Law and Its Enforcement in Indonesia, Japan and the USA," *Jurnal Media Hukum* 27, no. 1 (2020): 20, <https://doi.org/10.18196/jmh.20200138>.

¹⁴ Carolyn Riley Chapman et al., "The Quest for Compensation for Research-Related Injury in the United States: A New Proposal," *Journal of Law, Medicine & Ethics* 47, no. 4 (2019): 734, <https://doi.org/10.1177/1073110519897737>.

perhaps less structured than in Western countries. Professional insurance may be less common and less affordable for researchers in developing countries, although some initiatives may exist to raise awareness of the need for insurance

The legal protection model for researchers in developing countries, for example, Malaysia, is based on several laws and regulations that regulate research and innovation practices for researchers in Malaysia, including:

The Universities and University Colleges Act

The Universities and University Colleges Act (*Akta Universiti dan Kolej Universiti*; AUKU) regulates activities at universities and colleges in Malaysia. AUKU provides a legal basis for protecting the rights and obligations of researchers as well as research ethics in the academic environment. AUKU was promulgated in 1971 and subsequently amended six times, namely in 1971, 1975, 1983, 1996, 2009 and 2012.¹⁵

Intellectual Property Rights (IPR)

Malaysia has laws and regulations governing intellectual property rights, including patents, copyrights, and trademarks, namely the Copyright Act 1987 (Act 332). The latest development, in Article 43AA of the Copyright (Amendment) Act 2022, has been regulated regarding copyright infringement in the form of streaming technology.¹⁶

University of Malaya Medical Centre-Medical Research Ethics Committee

Many universities in Malaysia, such as Universiti Malaya, have research ethics centers tasked with providing guidance and advice on ethics in research and research practice.

National Research Institute

The institute is responsible for developing, managing, and providing research infrastructure that meets ethical and legal standards. They also provide resources and guidance for researchers involved in research in Malaysia.

Personal Data Protection

Although not yet fully integrated, Malaysia is developing personal data protection laws to protect individual privacy, including data generated from research.

Commitment To International Research Ethics

Malaysia is also active in following international research ethics standards set by international organizations such as the United Nations Educational, Scientific

¹⁵ National Higher Education Research Institute, Universiti Sains Malaysia, Pulau Pinang, Malaysia and Chang Da Wan, "The Universities and University Colleges Act in Malaysia: History, Contexts and Development," *Kajian Malaysia* 37, no. 2 (2019): 1, <https://doi.org/10.21315/km2019.37.2.1>.

¹⁶ Mohd Zamre Mohd Zahir et al., "A Study Concerning to The Tight Spot of Different Work Types That Can Be Protected by Copyright," *Resmilitaris* 12, no. 2 (2022): 7063, <https://resmilitaris.net/index.php/resmilitaris/article/view/886>.

and Cultural Organization (UNESCO) and World Health Organization (WHO). This includes the protection of research subjects, the use of experimental animals, and the integrity of research.

Professional Services Insurance

In Malaysia, professional services insurance is regulated by Bank Negara Malaysia (BNM), which is the country's central bank and insurance regulatory authority in Malaysia. BNM is responsible for overseeing and regulating the insurance industry in general, including professional services insurance. The regulations governing professional services insurance in Malaysia are included in the general insurance regulatory framework issued by BNM. Apart from that, there are also regulations and guidelines issued by BNM which specifically regulate professional services insurance products.

Professional insurance protection for researchers in Malaysia is not as common as protection for other professions such as doctors or lawyers. However, in Malaysia there are already insurance companies that are concerned about Professional Insurance, for example, PT CHUBB Life, which is a global insurance company, this company already offers Professional Indemnity Insurance (PII) for various professions, including accountants, architects, and engineers, lawyers and barristers, management consultants, marketing agents, media, mediators and counselors, project and construction managers, teachers, even single projects.¹⁷ There are no insurance products that specifically target the research profession, however, in the policy product offering there are options for the professions of architect, engineer, and single projects. The PII benefits offered by PT CHUBB Life include: 1) protection of the personal assets of partners and principals; 2) protection of company assets; and 3) maintaining a professional reputation.¹⁸

Thus, the model of legal protection for researchers in Malaysia includes regulations, institutions, and research ethics principles designed to protect the rights, welfare, and integrity of research in the country.

Model of Legal Protection for Researchers in Indonesia

In Indonesia, legal protection for researchers is still in the development stage and depends on government regulations and the awareness of relevant individuals and institutions. Professional insurance for researchers may be less common and less integrated into research and innovation practices, although some insurance companies and financial institutions provide insurance products that may include protection for researchers.

Regulations related to intellectual property rights and personal data protection continue to develop in Indonesia, but their implementation may still need to be improved. Protection of personal data, protection of confidential information, and research ethics included in the research ethics clearance and other regulations are generally available (*vide*. Law Number 27 of 2022 concerning Personal Data

¹⁷ Chubb Malaysia, "Professional Indemnity Insurance," n.d., <https://www.chubb.com/my-en/business/professional-indemnity-insurance.html>.

¹⁸ Chubb Malaysia, "Professional Indemnity Insurance," n.d., <https://www.chubb.com/content/dam/chubb-sites/chubb-com/my-en/business/professional-indemnity-insurance/documents/pdf/professional-indemnity-v5-.pdf>.

Protection), only specifically regarding the legal protection of researchers in the form of social security and legal assistance as mandated in Article 57 of the National System of Science and Technology Law is not yet available. It needs to be realized immediately, and the state needs to be present to make this legal protection a reality.

In general, the legal protection model for researchers in developed countries tends to be more mature and structured, while in developing countries, there are still many challenges and room for improvement. In Indonesia, efforts to increase legal protection for researchers are ongoing, including providing professional insurance and increasing awareness of the rights and obligations of researchers in the context of research and innovation.

Professional Indemnity Insurance as an Alternative Guarantee of Legal Protection Rights for Indonesian Researchers

In carrying out research and technological innovation activities, various risks may arise, including research and innovation failure, budget limitations, changes in regulations, rapid technological developments, changes in market needs, and unexpected competition. The term risk comes from the French "*risque*" or "*risquer*", and the Italian "*risco*" which means danger, and "*rischiare*" which means experiencing a dangerous situation.¹⁹

Various alternatives can be taken to manage the risk in question, including avoidance, prevention, transfer, and assumption or retention. Alternative options are generally adjusted to the level of risk exposure: risk retention can be used for low-level risks, risk transfer through insurance can be used for medium risks, and risk avoidance can be used for very high risks.²⁰

Being aware of the potential risks that may arise during research is very important. The losses that arise are often a source of worry or fear for everyone, making them feel insecure without the guarantee that other people are willing to share the burden or loss. For this reason, Article 57 of the National System of Science and Technology Law has regulated that Indonesian researchers have rights guaranteed by law to obtain legal protection in the form of social security and legal assistance. Of the various alternative solutions that the government can take, the legal protection guaranteed by Article 57 can be realized through professional insurance protection. This insurance provides financial protection against claims arising from professional errors, negligence, or other violations of obligations in carrying out research tasks.

Insurance is subject to comprehensive regulation in Chapter IX of the Indonesian Commercial Code and is also independently regulated by Law Number 40 of 2014 concerning Insurance ("Insurance Law"). The definition of Insurance is explicitly outlined in Article 246 of the Indonesian Commercial Code, specifically:

¹⁹ Safrin Marulitua, Ak., Mba., Cpa., Ca., "Perbandingan Volatilitas EWMA, GARCH dan Monte Carlo Terhadap Nilai Tukar Mata Uang Asing Bank BJB," *Jurnal Akuntansi dan Bisnis Krisnadwipayana* 3, no. 2 (June 6, 2016): 2–3, <https://doi.org/10.35137/jabk.v3i2.80>.

²⁰ Yi-Chih Yang, "Risk Management of Taiwan's Maritime Supply Chain Security," *Safety Science* 49, no. 3 (March 2011): 387, <https://doi.org/10.1016/j.ssci.2010.09.019>.

“Insurance or coverage refers to a contractual arrangement between two entities, namely the insurer and the insured, wherein the insured pays a premium in exchange for financial compensation in the case of a loss, damage, or loss of anticipated profits resulting from an unpredictable occurrence.”

When taking into consideration the condition of the definition of insurance contained in Article 246 of the Indonesian Commercial Code, it becomes evident that the primary focus of insurance is on loss insurance. As a result of this line of thinking, the Insurance Law offers an interpretation of the concept of insurance that is more expansive, as will be shown in the following:

“Insurance is an agreement between two parties, namely the insurance company and the policyholder, which becomes the ground for the receipt of premiums by the insurance company as an exchange for:

- a. Providing compensations to the insured or policyholder due to loss, damage, incurring costs, profit loss, or legal liability towards third parties that may be suffered by the insured or policyholder due to an uncertain event; or
- b. Providing payments based on the death of the insured or a payment based on the life of the insured with a benefit of which value has been determined and/or based on the result of fund management.”

The definition of insurance in Article 246 of the Indonesian Commercial Code provides a clear indication regarding the qualifications or elements of loss insurance. These include the presence of an agreement, involvement of the insurer and insured parties, payment of a premium, provision of compensation for losses resulting from damage, loss, or unobtained profit, and the occurrence of an uncertain event.

However, one could argue that the current definition of insurance, as outlined in the Insurance Law, is not comprehensive enough as it does not include the emerging types of mutual protection insurance and unit-linked insurance, which have become increasingly popular in contemporary society. The inception of unit-linked insurance in Indonesia took place approximately around 1988.²¹ The incorporation of insurance products that offer both protection and investment opportunities has led to significant adoption of unit-linked insurance among the Indonesian population.

In the context of business operations, the Insurance Law continues to recognize insurance as a contractual arrangement. The enactment of the Insurance Law represents a further development of insurance regulations, building upon the framework established by the Indonesian Commercial Code and preceding legislations, notably Law Number 2 of 1992 concerning the Insurance Business.

The Indonesian Commercial Code, which originated from Dutch colonial law, continues to be employed within the legal framework of Indonesia, operating on the principle of concordance.²² The validity of this declaration is established by

²¹ Tititk Rianawati and Sabtarini Kusumaningsih, “Mengenal Unit Link : Asuransi Dengan Fitur Investasi (Get To Know Unit Link : Insurance With Investment Features),” *Jurnal Visi Manajemen* 7, no. 3 (September 4, 2021): 162, <https://doi.org/10.56910/jvm.v7i3.174>.

²² Zaka Firma Aditya, “Romantisme Sistem Hukum di Indonesia: Kajian Atas Kontribusi Hukum Adat Dan Hukum Islam Terhadap Pembangunan Hukum di Indonesia,” *Jurnal Rechts Vinding*:

Article I of the Transitional Rules of the 1945 Constitution, which stipulates that: "All existing laws and regulations remain in effect as long as new ones have not been created according to this Constitution."

The Insurance Law is the primary piece of legislation that lays out the legal parameters for insurance business activities in Indonesia. The preceding insurance legislation nullifies the previously adopted Law Number 2 of 1992 regarding the Insurance Business as it applies to the industry. The Insurance Law is a comprehensive document that is comprised of 18 chapters and 92 articles that deal methodically with a variety of laws that are associated with insurance.

The Indonesian Commercial Code's Article 247 divides insurance into five categories based on its type: 1) fire risks; 2) risks to unharvested agricultural products; 3) risks to one or more people's lives; 4) risks associated with enslavement; and 5) risks associated with land, river, and inland water transportation. The three main categories of insurance are: 1) loss insurance, sometimes known as general insurance; 2) life insurance; and 3) freight insurance. The Indonesian Commercial Code's Article 268, however, allows for the expansion of the insurance industry, stating that "Insurance can take as its principal all interests that can be valued in money, can be endangered, and are not excluded by law."

Several legal concepts serve as the foundation for the applicable regulations in insurance law as a system of law. The following are the guiding principles of insurance law, as follows:²³

1. The principle of insurable interest principle. By the principle of insurable interest, it is imperative for every participant seeking to engage in an insurance agreement to possess a vested interest in the subject matter of the insurance.²⁴ The individual covered by an insurance policy becomes entangled in the ramifications of an unforeseen calamity, resulting in personal detriment. The following are the legal foundations underlying the principle of insurable interest in the Indonesian Commercial Code:
 - a) Article 250: "If a person who is insured for himself or herself, or someone whose expense is insured by a third party, at the time of insurance does not have an interest in the fine insured, then the insurer is not obliged to compensate for the loss."
 - b) Article 268: "Insurance can take as its principal all interests that can be valued in money, can be endangered, and are not excluded by law."
2. The principle of utmost good faith. In applying the principle of utmost good faith, each party should provide as complete information as possible,²⁵ which

Media Pembinaan Hukum Nasional 8, no. 1 (May 15, 2019): 41, <https://doi.org/10.33331/rechtsvinding.v8i1.305>.

²³ Irius Yikwa, "Aspek Hukum Pelaksanaan Perjanjian Asuransi," *Lex Privatum* 3, no. 1 (February 13, 2015): 140, <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/7033>.

²⁴ Xiao Lin and W. Jean Kwon, "Application of Parametric Insurance in Principle-compliant and Innovative Ways," *Risk Management and Insurance Review* 23, no. 2 (June 2020): 13, <https://doi.org/10.1111/rmir.12146>.

²⁵ Esther Masri, "Pelanggaran Prinsip Itikad Baik Dalam Perjanjian Asuransi Pada PT Asuransi Jiwasraya Cabang Padang," *Krtha Bhayangkara* 12, no. 1 (June 18, 2018): 118, <https://doi.org/10.31599/krtha.v12i1.33>.

will be able to influence the other party's decision to agree or not, whether such information is requested or not. The legal basis for the principle of utmost good faith in the Indonesian Commercial Code, among others, is Article 251, namely: "All false or incorrect notifications, or all concealments of circumstances known by the insured, even if done in good faith, of such a nature, that the contract would not have been entered into, or would not have been entered into on the same terms if the insurer had known of the circumstances." All of these things make the coverage void."

Currently, the process of the judicial review of Article 251 of the Indonesian Commercial Code has been rejected by the Panel of Judges of the Constitutional Court on the basis that the petition is unclear or vague (obscure) and is not being considered further (vide. Decision Number 52/PUU-XXI/2023 dated 27 June 2023).²⁶ Previously, a lawsuit was filed by Leonardo Siahaan as the applicant because Article 251 of the KUHD was deemed to conflict with the 1945 Constitution in connection with the provisions of Article 251 of the Indonesian Commercial Code being unfair because it only imposed obligations on the insured. Both parties, the insured and the insurer, should have the same position in the insurance agreement.

3. The principle of proximate cause. When the principle of proximate cause is used, the insurer will provide compensation to the insured for losses only if an event is determined to be caused by the specific reasons outlined in the policy.²⁷ One of the legal foundations for the idea of utmost good faith in the Indonesian Commercial Code is Article 276, among other provisions, namely: "No loss or damage caused by the insured's fault will be borne by the insurer. He may even continue to hold or collect the premium if he has begun to bear the risk."
4. The principle of indemnity. When implementing the principle of indemnity, the insurer's compensation for losses to the insured party mustn't result in a financial position that is more favorable than the insured party's position before experiencing the loss.²⁸ The objective is to restore the insured party to their original financial state. The legal basis for the principle of indemnity in the Indonesian Commercial Code, among others:
 - a) Article 250: "If a person who is insured for himself or herself, or someone whose burden is insured by a third party, at the time of insurance does not have an interest in the fine insured, then the insurer is not obliged to compensate for the loss."
 - b) Article 252: "Except in cases outlined by statutory provisions, a second insurance may not be provided for the same time and for the same danger for goods that have been insured for their full value, with the threat of cancellation of the second insurance."

²⁶ Constitutional Court, Decision of Constitutional Court Number 52/PUU-XXI/2023, Leonardo Siahaan 21–22 (Constitutional Court 2023).

²⁷ Joshua Knobe and Scott J. Shapiro, "Proximate Cause Explained: An Essay in Experimental Jurisprudence," *University of Chicago Law Review*, Forthcoming, February 26, 2020, 8, <https://dx.doi.org/10.2139/ssrn.3544982>.

²⁸ Zil Aidi, "Prinsip Indemnitas Dalam Asuransi Kerugian Syariah," *Yustisia* 24, no. 2 (2016): 190.

- c) Article 253 paragraph 1: "Insurance that exceeds the amount of the price or actual interest is only valid up to the amount of the value."
 - d) Article 274: "Even though the value is stated in the policy, the judge has the authority to order the insured to explain the basis for the stated value if reasons are presented that give rise to a reasonable suspicion that the declared value is too high."
 - e) Article 275: "However, if the goods insured have previously been assessed by experts designated for that purpose by the parties, and if sued, sworn in by a judge, then the insurer cannot dispute this, except in cases of fraud; all this is without prejudice to the exceptions made in the statutory provisions."
5. The principle of subrogation. Using the subrogation principle facilitates the risk transfer from the insured party to the insurer.²⁹ As part of this arrangement, the insured party is obligated to pay a premium to the insurer, the value of which is established by the insurer. The legal basis for the principle of subrogation in the Indonesian Commercial Code, among others:
- a) Article 284: "The insurer who has paid for the loss of the insured item acquires all rights that the insured would have had against a third party about the loss, and the insured is responsible for any actions that may harm the insurer's rights against the third party."
 - b) Article 288: "In the second case, the insurer is obliged to rebuild or repair it. The insurer has the right to monitor that the money that must be paid by him within the time determined, if necessary, by the judge, is used for that purpose. The judge can even order the insured upon the insurer's demands, if there is a reason, to provide adequate guarantees."
6. The principle of contribution. When implementing the contribution principle, the insurer has the prerogative to extend an invitation or request to other insurers who are equally responsible for the insured party to contribute towards a compensation payment jointly.³⁰ The legal basis for the principle of contribution in the Indonesian Commercial Code includes Article 278, namely: "If on one policy alone, even on different days by various insurers, more than its value is insured, they together, according to the balance of the amount they signed, only bear the actual value insured."

Except for life insurance, the regulations about insurance policies are governed by Article 256 of the Indonesian Commercial Code. This article stipulates that insurance policies are required to have several fundamental components: The essential elements to be included in an insurance policy are as follows: 1) the effective date of coverage; 2) the identity of the policyholder, whether it be the individual bearing the cost of the insurance or another party; 3) a comprehensive description

²⁹ Ananda Dara Prameswari, Man Sastrawidjaja, and R. Kartikasari, "Praktik Subrogasi oleh Perusahaan Asuransi di Kota Bandung Menurut Kajian Hukum Asuransi," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan dan ke-PPAT-an* 1, no. 2 (June 29, 2018): 271, <https://doi.org/10.24198/acta.v1i2.120>.

³⁰ Febri Endra Budi Setyawan, "Sistem Pembiayaan Kesehatan," *Saintika Medika* 11, no. 2 (December 2015): 123.

of the insured items or entities; 4) the monetary value of the insurance coverage; 5) the risks assumed by the insurer at its own expense; 6) the specified duration during which the insured risks are applicable and the insurer is liable; 7) the insurance premium to be paid; and 8) any additional provisions or conditions that both parties have agreed upon, as well as any pertinent information that the insurer should be aware of. Every insurer must affix their signature to the policy.³¹

As an agreement, the Indonesian General Insurance Association (*Asosiasi Asuransi Umum Indonesia*; AAUI) has conceptualized a standard policy to be issued by each AAUI member insurance company.³² A standard fire insurance policy, as defined in AAUI Decree No. 08/AAUI/2007, and a standard personal accident insurance policy, as defined in AAUI Decree No. 13/SK.AAUI/2016, are two examples.³³ The use of standardized contracts in the insurance industry has also been regulated by Article 30 of Financial Services Authority Regulation No. 6/POJK.07/2022 of 2022 concerning Consumer and Community Protection in the Financial Services Sector.³⁴

Regarding the development of science and technology in Indonesia, Article 57 of the National System of Science and Technology Law is a key point that guarantees the rights of researchers and emphasizes legal protection for researchers' intellectual contributions. The legal protection aspect contained in Article 57 of the National System of Science and Technology Law reflects the concept of Development Law Theory developed by Mochtar Kusumaatmadja.

Development Law Theory explains the concept of law as rules or regulations that can indeed function as a regulator towards human activities that are desired by development or renewal.³⁵ Apart from that, Development Law Theory also has a role in ensuring that change occurs in an orderly manner.³⁶ Through the legal framework of Article 57 of the National System of Science and Technology Law, Indonesia can develop science and technology by providing adequate legal protection to researchers, supporting the realization of targeted development, and improving the welfare of society as a whole. This concept opens the door to establishing a legal framework that can provide comprehensive protection for Indonesian researchers in carrying out research and innovation activities.

³¹ Tutiek Retnowati and Karsono Karsono, "Pembatalan Perjanjian Asuransi Jiwa Secara Sepihak," *SAPIENTIA ET VIRTUS* 1, no. 2 (September 30, 2014): 156–57, <https://doi.org/10.37477/sev.v1i2.163>.

³² The Indonesian General Insurance Association currently has 77 members, consisting of 71 general insurance companies and 6 reinsurance companies. *Asosiasi Asuransi Umum Indonesia*, "Sejarah," January 2022, <https://aui.website/sejarah/>.

³³ *Asosiasi Asuransi Umum Indonesia*, "Polis," January 2022, <https://aui.website/polis/>.

³⁴ Fausia Isti Tanoso, "Legal Protection for Consumers of Life Insurance Products During COVID-19 Pandemic in Indonesia," *Global Legal Review* 2, no. 1 (April 30, 2022): 41, <https://doi.org/10.19166/glr.v2i1.5086>.

³⁵ Wahyu Nugroho, "Rekonstruksi Teori Hukum Pembangunan Kedalam Pembentukan Perundang-Undangan Lingkungan Hidup dan Sumber Daya Alam Pasca Reformasi Dalam Bangunan Negara Hukum," *Jurnal Legislasi Indonesia* 14, no. 04 (2017): 371, <https://doi.org/10.54629/jli.v14i4.110>.

³⁶ Mochtar Kusumaatmadja, *Pembinaan Hukum Dalam Rangka Pembangunan Nasional* (Bandung: Binacipta, 1986), 11.

CONCLUSION

Articles 57 and 58 of Law Number 11 of 2019 concerning the National System of Science and Technology, as the main legal basis for various aspects of research and innovation, have mandated the Indonesian government to involve, protect, and provide clear rights and obligations for researchers. However, to date, the legal ideals outlined in Articles 57 and 58 of the National System of Science and Technology Law to protect researchers have not been able to be implemented effectively, because there has been no derivative policy implemented by the government. The author formulates that to develop science and technology by providing adequate legal protection to researchers, supporting the realization of targeted development, and improving the welfare of society, the Government needs to immediately implement a policy in the form of enforcing professional insurance for researchers which is professional indemnity insurance.

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