

# INSURANCE LITIGATION

## Indonesia



# Insurance Litigation

Consulting editors

**Bryce L. Friedman, Karen Cestari**

*Simpson Thacher & Bartlett LLP*

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Quick reference guide enabling side-by-side comparison of local insights, including into preliminary and jurisdictional considerations; interpretation of insurance contracts; providing notice; duty to defend; standard commercial general liability policies; first-party property insurance; directors' and officers' insurance; cyber insurance; terrorism insurance; and recent trends.

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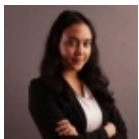
**Ruben Soeratman**

ruben.soeratman@nurjadinet.com  
*Nurjadin Sumono Mulyadi & Partners*



**Andi Alfian Nurman**

andi.nurman@nurjadinet.com  
*Nurjadin Sumono Mulyadi & Partners*



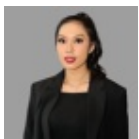
**Palestiniaty**

palestiniaty@nurjadinet.com  
*Nurjadin Sumono Mulyadi & Partners*



**Pandu Rizky Putra Pratama**

pandu.pratama@nurjadinet.com  
*Nurjadin Sumono Mulyadi & Partners*



**Ruth Hara Tambunan**

*Nurjadin Sumono Mulyadi & Partners*

NURJADIN  
SUMONO  
MULYADI  
&  
PARTNERS

## PRELIMINARY AND JURISDICTIONAL CONSIDERATIONS IN INSURANCE LITIGATION

### Fora

#### In what fora are insurance disputes litigated?

As required by the Financial Services Authority (OJK), all insurance policies should include a clause on the procedure for resolving insurance disputes between the insured and the insurer.

Out-of-court dispute resolutions could be conducted through the alternative dispute resolution institution body for the financial sector, under the authority of OJK. The body is the Financial Services Sector Alternative Dispute Resolution Institution. The insurance sector is required to use this body for out-of-court dispute resolutions.

In addition, the insured may file a complaint to OJK. Then, OJK will arrange to resolve the dispute between the insurer and the insured to obtain an agreement on the disputed agreement.

*Law stated - 13 December 2022*

### Causes of action

#### When do insurance-related causes of action accrue?

Cause of action accrues when the operative clause is triggered and no conditions or exclusions prevent it being covered. Furthermore, the insured shall also comply with the necessary processes.

*Law stated - 13 December 2022*

### Preliminary considerations

#### What preliminary procedural and strategic considerations should be evaluated in insurance litigation?

The validity of the insurance policy shall be considered first, whereby for the validity of an insurance policy, in addition to the provisions regarding the legal terms of the agreement in general as regulated in the Indonesian civil code, special conditions that are the legal requirements of the insurance policy as governed under OJK regulations and the Indonesian commercial law also apply and must be fulfilled in the insurance policy. This includes the principle of interest, the principle of utmost good faith and the principle of indemnity.

Afterwards, it can be concluded that the insurance policy has complied with all applicable provisions and is legally valid, and further analysis of the dispute resolution clause contained in the policy can be conducted to determine the dispute resolution mechanism that shall be taken.

Furthermore, it will be necessary to take into account the legal principles applicable to insurance, such as the principle of insurable interest, the principle of utmost good faith and the principle of indemnity.

Insurance litigation, like other civil disputes, requires a range of preliminary procedures, including the examination of documentary evidence, witnesses and even expert examinations. It may take a long time to obtain a decision with a permanent legal force through a court proceeding because there are several levels of court that they need to go through, including the District Court, High Court and the Supreme Court.

In addition to the above, the insurer shall also evaluate the insurable interest, subrogation, contribution and proximate cause.

*Law stated - 13 December 2022*

## Damages

### What remedies or damages may apply?

In performing the insurance policy, the compensation provided by the Insurer to the insured shall implement the indemnity principle as governed under the Indonesian Commercial Code. The indemnity principle constitutes that the insured shall only procure compensation according to the loss suffered by the insured, considering the purpose of insurance is to restore the insured to its initial state and not for the purpose of profit; in essence, insurance shall only be subject to material objects.

The principle of indemnity applies and can be extended to new for old replacement, market value or reinstatement value depending on the kind of insured interest. A car can be indemnified with a new one if it is no older than five years, equipment can be indemnified with a market value and property can be indemnified with a reinstatement value.

However, the indemnity principle does not apply to life insurance, the life of a person cannot be valued with a sum of money.

The Indonesian Commercial Code ensures the amount of coverage received by the insured is up to the amount insured and will not be more than the amount insured. Thus, the compensation received by the insured shall be in accordance with the insurance policy and shall not be demanded in relation to any matter that exceeds the initial insurance policy.

*Law stated - 13 December 2022*

### Under what circumstances can extracontractual or punitive damages be awarded?

Insurance cases are classified as special civil cases. As a civil case, extracontractual cannot be awarded for insurance dispute. The court cannot award more than the plaintiff demands.

Punitive damages are not commonly covered under Indonesian law even in cases such as pollution with strict liability. However, in a different case, such as in D&O insurance, the insurance company may pay the penalty imposed by the pertaining authority, for instance.

*Law stated - 13 December 2022*

## INTERPRETATION OF INSURANCE CONTRACTS

### Rules

#### What rules govern interpretation of insurance policies?

The Financial Services Authority (OJK) regulation on the implementation of insurance businesses has stipulated that the insurance policy shall not contain words or sentences that can lead to different interpretations of the risks covered by the insurance, the obligations of the insurer and the obligations of the insured; or make it difficult for the insured to manage his or her rights.

Furthermore, OJK Regulation regulates the writing of an insurance policy shall be clear so that it is easy to read and easy to understand by the policyholder, the insured or the participant. If within an insurance policy, there is a formula that excludes or limits the risk of being covered by the insurance policy concerned, such formula must be printed in bold or italic type so that it can be easily identified that there are exceptions or limitations on the causes of risks covered in the insurance policy.

*Law stated - 13 December 2022*

## Ambiguities

### When is an insurance policy provision ambiguous and how are such ambiguities resolved?

According to the Indonesian Civil Code, there is also an interpretation method, namely the doctrine, whereby if there is ambiguity in an agreement, then the agreement must be interpreted against the interpretation of the party who composed the contract. Additionally, in the Civil Code, it is stipulated that words or sentences that have a clear meaning should not be interpreted. What is meant by the doctrine of clear understanding is that if the meaning of every word or sentence written in the agreement is in clear, complete and unambiguous language, then the agreement does not require any more interpretation.

In the event that the provisions of the insurance policy are not clear and lead to multiple interpretations, in accordance with the provisions of the Civil Code, the intention of the two parties who made the insurance policy shall be considered, the provisions of the insurance policy shall be understood according to the meaning that allows the insurance policy to be implemented, the meaning that is most appropriate to the nature of the policy must be chosen, and the provisions of the insurance policy must be interpreted according to what is customary in the country or in the place where the agreement has been made.

*Law stated - 13 December 2022*

## NOTICE TO INSURANCE COMPANIES

### Provision of notice

#### What are the mechanics of providing notice?

The procedure for submitting notice or claim is generally stipulated in the insurance agreement. However, the insured is obliged to submit a notice with relevant facts regarding the incident as stipulated in the Indonesian Commercial Code.

The relevant laws and regulations do not provide a specific procedure for the insured to submit a claim to the insured, as the procedure is stipulated in the insurance policy. Furthermore, the notification mechanism for the submission of a claim should be further regulated in the insurance policy as regulated in the OJK Regulation.

*Law stated - 13 December 2022*

## Obligations

### What are a policyholder's notice obligations for a claims-made policy?

Notification of insurance claims by the policyholder must be made immediately after the event covered under the insurance policy occurs. Prevailing laws and regulations in Indonesia do not govern the period for notice but obliged the insurer to govern the procedure of insurance claim disbursement within the insurance policy, which also includes claims-made policy.

The insured will also have to provide complete facts and evidence of loss as agreed in the insurance policy. Therefore, the policyholder's notice obligations for a claims-made policy are governed under the insurance policy.

*Law stated - 13 December 2022*



## Timeliness

### When is notice untimely?

Indonesian regulation does not regulate the specific time for the insured to notice to the insurer, the provision of notice is regulated under an insurance policy that is agreed by both parties.

*Law stated - 13 December 2022*

### What are the consequences of late notice?

Under current prevailing laws and regulations, there are no provisions that specifically regulate the consequences of late notice. Based on Financial Services Authority (OJK) regulations, insurance policies must specifically regulate the terms and procedures for submitting claims, including relevant and necessary supporting evidence in filing claims and procedures for settlement and payment of claims. Therefore, the consequences of late notice will depend on the provisions contained in the insurance policy as agreed by the insurer and the insured.

In a general insurance policy, it is usually agreed that the insurance will not be prejudiced by any inadvertent delays, errors or omissions in notifying the insurers of any circumstances or event giving rise or likely to give rise to a claim under the policy. The only legal argument for the insurer's defence is that the claim is notified beyond the policy period (considering the claim made basis policy is the most commonly used). Delay in notification may also breach the principle of utmost good faith and may deviate from the judgement of the underwriter for the renewal terms and conditions.

According to Indonesian insurance practice, the insurance policy usually regulates the provision of the 'loss notification clause (30 days)', which means that the insurer shall submit the application of claim no later than 30 days after the event occurs.

In the event the insurance policy does not regulate the notice period, then, pursuant to the Indonesian Civil Code, all rights to make a claim shall expire after the 30-year period has elapsed.

*Law stated - 13 December 2022*

## INSURER'S DUTY TO DEFEND

### Scope

#### What is the scope of an insurer's duty to defend?

Based on the prevailing laws and regulations in Indonesia, there is no obligation on the insurer to defend the insured in the lawsuit endured by the insured. Therefore, the insurer's duty to defend must be regulated and agreed upon in the insurance policy.

In practice, the insurer's duty to defend includes defence costs incurred upon the insured as covered under the insurance policy. Since defence cases generally are expensive, the scope of an insurer's duty to defend may include attorney fees in responding to subpoenas filed by third parties, representing the insured both in court and out of court. It would also cover the court fees, ranging from the District Court to the Supreme Court. Moreover, other costs for witnesses, laboratories, surveyors, research and investigations deemed necessary for the defence of claims are also included. Lastly, there are also costs for negotiating, mediating and arbitration for claims adjustment.

*Law stated - 13 December 2022*

## Failure to defend

### What are the consequences of an insurer's failure to defend?

In the event that the insured fails to defend his or her legal standing in the litigation cases, the insurer will only cover the losses based on the amount of the insurance agreement agreed by both parties.

*Law stated - 13 December 2022*

## STANDARD COMMERCIAL GENERAL LIABILITY POLICIES

### Bodily injury

#### What constitutes bodily injury under a standard CGL policy?

A standard CGL policy as governed under Indonesian Insurance Law is the provision of insurance to the insured or the policyholder for any loss, damage, cost incurred, loss of profits or legal liability to third parties that may be sustained by the insured or policyholder due to the occurrence of an unforeseeable event.

Prevailing laws and regulations in Indonesia do not govern specific regulations regarding CGL policy. Therefore, the policy for a bodily injury in a CGL policy shall be in accordance with the insurance policy.

The GCL policy shall be subject to several exceptions, for example:

- exclusion of the risk of war and other risks similar or equivalent to war;
- exclusion of nuclear risk, radioactivity, pollution, asbestos and such;
- exclusion of risks covered under other insurance policies;
- exceptions to errors or omissions committed intentionally and criminal acts;
- exclusion of risks related to intellectual property such as patents, trademarks and such; and
- exclusion of risks associated with liability due to war.

*Law stated - 13 December 2022*

### Property damage

#### What constitutes property damage under a standard CGL policy?

In practice, property damage covered is mostly for third-party owned properties. Insured owned properties (first party) and properties owned by a party to a contract (second party) are usually excluded unless there is a specific condition mentioned in the policy.

However, usually there are exceptions to the causes or the object of property damage, for example:

- deliberation of the insured;
- representative of the insured or other parties at the instruction of the insured;
- deliberate mistakes;
- omissions by the insured or the representative of the insured;
- business disruptions; or
- goods belonging to other parties that are stored or deposited to the insured.

*Law stated - 13 December 2022*

## Occurrences

### What constitutes an occurrence under a standard CGL policy?

Occurrence under a GCL policy, in practice, means an event or accident that results in personal injury or property damage to a third party during the operations of business conducted by the insured within the period of insurance coverage.

The occurrence must be a result of insured activities. Insured activities are the insured interest in the CGL insurance. Usually, an occurrence shall be clearly specified under CGL policy and what does not constitute an occurrence or the exceptions shall be expressly specified in bold or italics in the CGL policy.

*Law stated - 13 December 2022*

### How is the number of covered occurrences determined?

The policy must at least contain the provision regarding:

- the date of the expiration of insurance;
- the name of the insured;
- the insured object;
- the risk insured;
- the sum insured;
- the dependent premium; and
- all circumstances considered or may be crucial for the insurer to be aware of and any terms agreed between the parties.

Included in the policy are covered occurrences that will be borne by the insured in the event that the insured submits a claim.

Furthermore, based on Indonesian insurance practice, it is common to find a clause of 'Single Loss Clause (72 Hour Clause)', which means that multiple events that occur during the 72 hours will be considered or counted as one event. Therefore, the insurer will only cover one loss.

As stipulated in the regulation of the Financial Services Authority (OJK), payment of any claim or benefit arising applies if the risks involved are covered in the policy or reinsurance agreement.

Referring to the provision above, the risks or covered occurrences shall previously have been specified upon by the insured and the insurer in the insurance policy.

*Law stated - 13 December 2022*

## Coverage

### What event or events trigger insurance coverage?

Event or events that trigger insurance coverage is when the losses or causes to initiate an insurance claim occur during the insurance period. Such event or events are limited to only the events as specified under the insurance policy.

*Law stated - 13 December 2022*

## How is insurance coverage allocated across multiple insurance policies?

Indonesian regulation does not prohibit the insured from possessing two or more policies on similar subject insurance. However, the total amount of the insurance value cannot exceed the value of the insured object.

Furthermore, to determine this, it is necessary to consider the principle of proximate cause or multiple events and it may be assessed by a loss adjuster or a forensic investigator for the sake of independent judgement.

If the insured submits a claim to two or three different insurers that cover the same object insurance, the insurer will not provide an amount of indemnity that is already covered by another insurance company. This condition is applied to prevent any double claim on the same event

*Law stated - 13 December 2022*

## FIRST-PARTY PROPERTY INSURANCE

### Scope

#### What is the general scope of first-party property coverage?

First-party property coverage in Indonesia consists of two types depending on the extent of the coverage provided by the policies, namely all-risk policy and loss-based policy.

In an all-risk policy, all types of losses can be borne by the insurer. The insurance will pay claims for all types of damage, including minor damage, serious damage and the risk of loss. The limitation of all-risk policy is only to the conditions that exclude the claim. Therefore, in all-risk insurance, the insured only needs to ensure that the conditions that cause the loss are not included in the conditions that are excluded from the insurance policy.

Afterwards, for loss-based policy, the types of losses that can be covered will be specifically stated in the policy. Thus, in addition to ensuring that the loss suffered by the insured is not caused by an excluded condition, the insured must also ensure that the type of loss can be covered by insurance.

*Law stated - 13 December 2022*

### Valuation

#### How is property valued under first-party insurance policies?

The party authorised to conduct adjustments or consultation on the assessment of the insured property or object is the insurance loss appraisal business entity in accordance with Financial Services Authority (OJK) regulation.

The insurance loss appraisal business entities are obliged to obtain a business licence issued by the OJK, and the members of the board of directors and the expert staff of the insurance loss appraisal company are obliged to obtain a certificate of insurance loss appraisal issued by the Professional Certification Institute in the insurance sector.

*Law stated - 13 December 2022*

### Natural disasters

#### Is insurance available in your jurisdiction for natural disasters and, if so, how does it generally apply?

Yes, insurance for natural disasters is available in Indonesia. Indonesia's geographical condition makes it very vulnerable to volcanic eruptions, earthquakes and floods.

However, specific insurance for natural disasters is not yet provided. It is usually in the form of property insurance, vehicle insurance or travel insurance; whereby the insured and the insurer may add clauses in their agreement regarding their main concern on natural disasters, such as floods.

*Law stated - 13 December 2022*

## **Pandemic**

Is insurance available in your jurisdiction for pandemic-related losses and, if so, how does it generally apply?

Yes, currently in Indonesia, there is an insurance policy that specifically covers the impact of the coronavirus. Its application may be in the form of cash compensation for daily hospitalisation, independent isolation, trip cancellations and loss of income owing to coronavirus.

*Law stated - 13 December 2022*

## **DIRECTORS' AND OFFICERS' INSURANCE**

### **Scope**

What is the scope of D&O coverage?

D&O insurance coverage on the operational and managerial negligence of a company that is committed by the insurer in his or her capacity as director or officer of the company includes:

- a lawsuit filed by the employee related to the discrimination, sexual harassment and layoffs filed by the employee;
- defamation; and
- any other cases that are agreed upon by the insurer and insured.

*Law stated - 13 December 2022*

### **Litigation**

What issues are commonly litigated in the context of D&O policies?

Issues that are commonly litigated are management errors in carrying out a task or a responsibility. The director as a party under Indonesian Company Law is the party authorised to act on behalf of the company and is very vulnerable to actions that can cause material losses to the company. The debate that often arises, in this case, is whether the directors of the company carry out their duties and authorities by considering the principles of duty of care and duty of loyalty as enshrined in Indonesian Company Law. In addition, it is necessary to note whether the action of the director is a criminal act or only a civil matter. This is because usually D&O policies in Indonesia exclude criminal acts as a risk that can be covered by policies.

Another common issue is employment practice errors or omissions that violate the labour rights of individuals related to the work or job opportunities they have in the company.

*Law stated - 13 December 2022*

## CYBER INSURANCE

### Coverage

What type of risks may be covered in cyber insurance policies?

Cyber insurance policies can help mitigate risks by offsetting the costs involved with recovering after a cyber-related security breach or similar event.

In essence, cyber insurance provides:

- protection against cyber threats; and
- a guarantee of system and data recovery.

Cyber insurance has several protection facilities specifically designed to help manage and reduce the effects of data breaches and the consequences of losing a company's information. The forms of insurance coverage include, among others:

- personal data liability;
- corporate data liability;
- data breach by an outsourced company or employee; and
- data protection against the risk of damage that occurs due to data breaches such as deletion or damage, misuse, data theft and others.

There is also cyber insurance that covers privacy issues, network security, media, cyber extortion, data asset loss and business disruption risks.

*Law stated - 13 December 2022*

### Litigation

What cyber insurance issues have been litigated?

As cyber insurance is still considered new in Indonesia, it is still uncommon for corporations and individuals to make use of cyber insurance products to protect their personal or corporate data. Therefore, there has been no case recorded yet regarding cyber insurance in the Indonesian Supreme Court.

*Law stated - 13 December 2022*

## TERRORISM INSURANCE

### Availability

Is insurance available in your jurisdiction for injury or damage caused by acts of terrorism and, if so, how does it generally apply?

It is possible to have an insurance policy for injury or damage caused by acts of terrorism in an Indonesian insurance agreement. It is stipulated in article 258 of the Indonesian Commercial Code that an insurance policy can cover all interests that can be valued in money, can be threatened by danger and are not excluded by law.

Therefore, damaged or injury caused by acts of terrorism could be insured considering that the insured property is an interest that can be valued in money, it can be threatened with danger, and there is no prohibition against terrorism insurance.

The procedures for a policy for insurance for injury or damage caused by acts of terrorism are that the insurer shall ensure in the insurance agreement the provision of an insurance policy for injury or damage caused by acts of terrorism; that is, on condition that the object is insured for terrorism risks, and in the event that the insured has suffered a loss in this way, the insurer is obliged to compensate the loss suffered by the insured.

*Law stated - 13 December 2022*

## UPDATE AND TRENDS

### Key developments of the past year

Are there any emerging trends or hot topics in insurance law in your jurisdiction?

Indonesia is one of the countries in Southeast Asia that saw a fairly rapid spread of coronavirus. Many businesses suffered losses and ended up in bankruptcy because of the limitations on work over several months. Before the pandemic, insurance companies conducted business face-to-face, in particular for investment-linked insurance policies (PAYDI). The restrictions imposed meant that insurance companies had to find other ways to offer insurance.

Therefore, in 2020, the Financial Services Authority issued a regulation that allows an insurance company to offer an insurance product and PAYDI via digital means. However, it should be borne in mind that the insured shall fulfil all the requirements to be able to conduct business digitally.

*Law stated - 13 December 2022*

## Jurisdictions

	<b>Belgium</b>	Lydian
	<b>Chile</b>	JRR Abogados
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