

Insurance Policies as Joint Property in Family Law: A Comparative Study of Indonesia and England

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Abstract

The legal status of insurance policies as part of joint assets is an interesting study because there are no specific regulations related to this. This study aims to analyze the status of insurance policies by comparing laws in the field of family law between Indonesia and England. This study is a normative legal study with a conceptual, comparative, and legislative approach. In Indonesian law, loss insurance, although the premium is paid from joint assets, is not categorized as joint assets because its function is to replace losses. In contrast, life insurance can be considered joint or personal assets depending on the source of premium funds, the purpose of the insurance, and the applicable agreement. On the other hand, the English legal system, which is based on common law, assesses insurance policies in marriage based on precedents and factual considerations, such as the source of funds and the time of the claim, although it is not explicitly regulated in legislation. This comparison shows that although Indonesia and England have different legal systems—civil law and common law—both have similarities in the basic principles of assessing the legal status of insurance policies, namely a contextual approach and based on relevant legal facts.

1. Introduction

Insurance is an agreement between two parties, namely the insurance company as the insurer and the customer or policyholder as the insured, where the insured pays premiums to the insurer in exchange for financial protection against certain risks that are uncertain to occur in the future.¹ In this agreement, the insurance company promises to provide compensation or benefits to the insured in the event of loss, damage, loss of profit, or legal liability resulting from an uncertain event, in accordance with the provisions agreed upon in the insurance policy.²

An insurance policy is a written agreement or contract between the insurance company (insurer) and the customer or policyholder (insured) that serves as proof of the transfer of risk from the insured to the insurer.³ This policy details the rights and obligations of both parties,

¹ Handoyo Prasetyo, "Restructuring Insurance Policy as an Ultra Vires Action Based on Limited Liability Company Law," *International Journal of Social Science and Human Research* 04, no. 07 (July 5, 2021), <https://doi.org/10.47191/ijsshr/v4-i7-09>.

² M Simanjuntak and Wiwik Sri Widiarty Tumanggor, T, Bernard Nainggolan, "Legal Protection of Consumers in Insurance Agreements Generally and Especially Marine Hull Insurance as One of Indonesia's Economic Development," *International Journal Of Artificial Intelligence Research* 8, no. 1 (2023): 1-10, <http://repository.uki.ac.id/id/eprint/12090%0Ahttp://repository.uki.ac.id/12090/1/LegalProtectionOfConsumersIn.pdf>.

³ Bionda Johan Anggara and Warsifah Warsifah, "Penerapan Hukum Kepailitan Dalam Kaitannya Kedudukan Otoritas Jasa Keuangan (OJK) Sebagai Institusi Pengatur Dan Pengawas Perusahaan

including the types of risks covered, participant data, insured object, insurance period, premiums to be paid, and other terms and conditions. The insurance policy serves as an official document that guides and serves as a reference in the cooperative relationship between the customer and the insurance company, ensuring that the insurance company is obligated to provide benefits or compensation in accordance with the risks that occur and are agreed upon in the policy, while the policyholder is obligated to pay premiums on time. The policy also protects the insurance company from claims that are not in accordance with the agreed-upon agreement. In short, an insurance policy is a legal contract that regulates the rights, obligations, and responsibilities between the insurer and the insured in an insurance product, and serves as the main guideline in the implementation of the insurance protection.

More specifically, insurance serves as a mechanism for transferring risk from the insured to the insurer, so that the potential losses the insured might experience can be managed and financially compensated.⁴ Furthermore, insurance plays a role in providing a sense of security, financial protection, and assisting in preparing funds for future needs such as pensions. The definition of insurance, according to Indonesian Law Number 40 of 2014 concerning Insurance (Law No. 40/2014), states that insurance is an agreement that forms the basis for the receipt of premiums by the insurance company in exchange for providing compensation to the insured for losses or making payments based on the life or death of the insured with predetermined benefits. Thus, insurance is an important tool in risk management that helps individuals or entities reduce the financial burden resulting from unexpected events by transferring that risk to the insurance company through premium payments.⁵

Disputes over insurance policies have become an increasingly significant issue in marital dissolution, particularly concerning their classification as joint marital property after divorce. These conflicts bear critical legal and economic implications, especially when the policy values are substantial or tied to life insurance, pensions, or property. In Indonesia, the divorce rate rose by approximately 15% in 2023 compared to the previous year, reaching over 516,000 cases, with more than 40% involving disputes over jointly owned assets. In the United Kingdom, although divorce rates declined to 94,590 cases in 2023 due to administrative reforms, over 45% of divorces still involved financial or asset-related disputes, according to ONS. Yet, legal scholarship has paid limited attention to how insurance policies—specifically those acquired during marriage—are treated as matrimonial property within varying legal systems. This study seeks to address this gap by investigating the legal position of insurance policies in post-divorce property division, through a comparative analysis between Indonesian and UK legal frameworks.

There are legal problems when the policyholder (insured), who was originally a married couple, but then divorced, resulting in legal uncertainty regarding whether the insurance policy can be considered joint property. This has consequences for the granting of rights that

Asuransi Negara (Contoh Kasus PT. Asuransi Jiwasraya)," *JIIP - Jurnal Ilmiah Ilmu Pendidikan* 5, no. 4 (2022): 1250–59, <https://doi.org/10.54371/jiip.v5i4.555>.

⁴ Ah. Azharuddin Lathif and Diana Mutia Habibaty, "Disparitas Penyelesaian Sengketa Jalur Litigasi Pada Polis Asuransi Syariah Dan Putusan Pengadilan," *Jurnal Legislasi Indonesia* 16, no. 1 (2019).

⁵ Sayyid Hasyeem Thorieq, "Pengaturan Hukum Asuransi Dalam Penanggulangan Bencana: Tantangan Dan Peluang," *Jurnal Ilmiah Wahana Pendidikan* Vol. 9, no. 13 (2023): 580–87, <https://jurnal.peneliti.net/index.php/JIWP/article/view/4497>.

should be obtained in the insurance legal relationship when the policyholder (insured), who was originally a married couple, but then divorced. Therefore, this research aims to analyze the position of the insurance policy by comparing the law in the field of family law between Indonesia and England.

Empirically, there is limited data on how courts in both countries resolve disputes involving privately held insurance policies in divorce settlements. Normatively, there is insufficient theoretical discussion on whether and how insurance policies should be classified under joint property regimes. This study aims to fill these gaps by applying a comparative legal method, drawing on doctrines of community property versus separate property, and examining civil law (Indonesia) versus common law (UK) perspectives.

The rationale for selecting the United Kingdom as a comparator lies in its contrasting legal structure and well-documented jurisprudence on matrimonial property. As a common law jurisdiction that applies principles of equity in divorce cases, the UK's approach differs markedly from Indonesia's civil law model. The UK also follows a separate property regime, which contrasts with Indonesia's community property presumption. These differences provide a rich ground for identifying potential reforms and theoretical advancements in Indonesian family patrimonial law, especially regarding the classification, valuation, and distribution of insurance assets. By mapping both convergences and divergences, this paper contributes to the development of more equitable and consistent frameworks for resolving insurance-related asset disputes in family law.

Similar research related to this study has been conducted by previous researchers, including Utami et al., who focused on the aspect of analyzing the impact of the implementation of the National Health Insurance (BPJS Kesehatan) policy on the physical abilities of persons with disabilities in Indonesia.⁶ Another study was conducted by Nego et al. discussing the impact of health insurance and its relation to the equitable distribution of healthcare services.⁷ Another study was conducted by Danialsyah, focusing on the application of the principle of utmost good faith in life insurance practices in Indonesia, particularly in the context of consumer legal protection.⁸ Of the three studies mentioned above, this study is original because it focuses on analyzing the position of the insurance policy by comparing the law in the field of family law between Indonesia and England, which is different from the three previous studies.

2. Methods

This research, which focuses on analyzing the legal standing of insurance policies by comparing family law in Indonesia and England, is a normative legal research.⁹ This research

⁶ Feryanda Utami et al., "Indonesia's National Health Insurance Policy Reform and Enhanced Physical Abilities in People with Physical Disabilities: A Policy Analysis," *Journal of International Development Cooperation* 18, no. 2 (November 2023): 29–56, <https://doi.org/10.34225/jidc.2023.18.2.29>.

⁷ Ingrid Green Nego et al., "Insurance Utilities in Indonesia: A Study for Future Opportunities," *International Journal of Health and Pharmaceutical (IJHP)* 5, no. 2 (May 25, 2025): 284–91, <https://doi.org/10.51601/ijhp.v5i2.370>.

⁸ Danialsyah Danialsyah, "Analisis Yuridis Itikad Tidak Baik Perusahaan Asuransi Jiwa Dalam Menjalankan Usaha Asuransi," *Jurnal Ilmiah Metadata* 7, no. 1 (February 5, 2025): 84–97, <https://doi.org/10.47652/metadata.v7i1.564>.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, 13th ed. (Jakarta: Kencana, 2017).

uses primary legal materials, including Law No. 40/2014, the Civil Code (KUHPerdata or Burgerlijk Wetboek), and Law Number 1 of 1974 concerning Marriage (Law No. 1/1974). Secondary legal materials consist of journal articles, books, and research findings discussing family law, insurance law, and general civil law aspects. Non-legal materials include a dictionary. Legal material analysis involves compiling existing legal materials, analyzing them according to legal issues, and formulating legal prescriptions or solutions to the identified legal problems.¹⁰ The approaches used are conceptual, legislative and comparative legal approaches.

3. Results and Discussion

3.1. Legal Position of Insurance Policies as Joint Property in Indonesian Family Law

Insurance, as part of civil law, is a special type of agreement regulated by both the Civil Code (KUH Perdata) and the Commercial Code (KUHD).¹¹ In the context of civil law, insurance is a contract between two parties: the insurer (insurance company) and the insured (policyholder). The insurer agrees to compensate the insured for losses, damages, or destruction resulting from an uncertain event, in exchange for premium payments from the insured.¹² This definition aligns with the Indonesian Dictionary (KBBI) definition of insurance as "pertanggungan" (insurance/guaranty): an agreement between two parties where one party is obligated to pay premiums, and the other party is obligated to provide full compensation to the premium payer if something happens to the first party or their property, as per the agreement.¹³

Legally, insurance falls into the category of profit-sharing agreements or kansovereenkomst.¹⁴ A contingent contract (perjanjian untung-untungan) is an agreement where the outcome, whether profit or loss, depends on an uncertain event. In other words, profit or loss hinges entirely on a specific, uncertain factor or event beyond the control of the parties involved. Article 1774 of the Indonesian Civil Code (KUH Perdata) defines a contingent contract as one where the outcome of profit or loss, for all or some parties, depends on an uncertain event. Examples of contingent contracts covered in the Commercial Code (KUHD) include insurance agreements, annuities (lijfrente), gambling, and wagering.¹⁵

The main characteristic of a contingency agreement is the uncertainty of the outcome, so that the parties cannot be certain of the outcome of the agreement when agreeing.¹⁶ This is

¹⁰ Suteki and Galang Taufani, *Motodologi Penelitian Hukum (Filsafat, Teori, Dan Praktik)*, Cetakan 3 (Depok: RajaGrafindo Persada, 2020).

¹¹ P.N.H. Simanjuntak, *Hukum Perdata Indonesia*, 3rd ed. (Jakarta: Kencana, 2017).

¹² Jong-Chan Lee, "Health Care Reform in South Korea: Success or Failure?," *American Journal of Public Health* 93, no. 1 (January 2003): 48–51, <https://doi.org/10.2105/AJPH.93.1.48>.

¹³ Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

¹⁴ Diana Mutia Habibaty and Ah Azharuddin Lathif, "Insurance Waqf Phenomenes In The Insurable Interest Perspective," *Penamas* 33, no. 2 (December 31, 2020): 225–40, <https://doi.org/10.31330/penamas.v33i2.409>.

¹⁵ Muhammad Syahid Hidayat, "Penyalahgunaan Klausula Eksonerasi Yang Merugikan Konsumen," *Jurnal Juristic* 1, no. 01 (2020): 107, <https://doi.org/10.35973/jrs.v1i01.1487>.

¹⁶ Fariz Eben Ezel Sagala and Siti Mahmudah, "Perjudian Dalam Sudut Pandang Hukum Perdata," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 5, no. 2 (December 21, 2023): 2363–70, <https://doi.org/10.37680/almanhaj.v5i2.3889>.

different from conventional agreements, such as buying and selling, where the results and consequences can be predicted and determined from the start.¹⁷ In short, a contingent contract is a contract involving risk and uncertainty where profit or loss depends on an uncertain event. Article 246 of the Commercial Code (KUHD) specifically regulates insurance as a contract obligating the insurer to compensate the insured based on the paid premiums.

The insurance policy is a written document serving as proof and the legal basis of the insurance contract, containing the terms, conditions, and rights and obligations of the parties. The substance commonly found in an insurance policy includes the following main components¹⁸:

1. Declaration
Contains data on the policyholder and insured, such as names, addresses, type of insurance, insured object, and other personal and administrative information.
2. Insuring Clause
Explains the risks covered by the policy and the insurance company's obligation to pay claims if those risks occur.
3. Exclusions
Lists risks, conditions, or events not covered by the policy, meaning no compensation will be provided.
4. Conditions
Requirements and conditions that both the policyholder and the insurance company must adhere to during the policy's validity, including premium payment obligations, claim procedures, and reporting status changes.
5. Premium
The amount and payment method for the premium the policyholder must pay to receive insurance coverage.
6. Insurance Benefits
Explanation of the benefits or compensation the policyholder will receive if the insured risk occurs.
7. Policy Term
The duration of the policy's protection, from the issuance date to the end of coverage.
8. Endorsements
Provisions governing changes or additions to the policy's content based on the policyholder's specific needs.
9. Warranties
Statements or promises the policyholder must fulfill, which, if violated, can affect insurance claims.
10. Incontestability Clause

¹⁷ Solikah Sriningsih, "Penerapan Asas Proporsionalitas Dalam Kontrak Layanan Kesehatan Antara Rumah Sakit Dan Badan Penyelenggara Jaminan Sosial (Bpjs)," *Jurnal Hukum Dan Etika Kesehatan* 1, no. 1 (2021): 1-10, <https://doi.org/10.30649/jhek.v1i1.11>.

¹⁸ Fina Rohmatika, "Perlindungan Hukum Klaim Asuransi Pemegang Polis Asuransi," *Jurnal Riset Ekonomi Dan Akuntansi* 2, no. 1 (December 20, 2023): 182-90, <https://doi.org/10.54066/jrea-itb.v2i1.1310>.

A clause stating that after a certain period, the insurance company cannot cancel the policy or refuse claims for specific reasons.

11. Policy Signature

The policy must be signed by the insurance company as proof of agreement and document authentication.

The entire substance forms a legally binding contract between the insurance company and the policyholder, ensuring the rights and obligations of both parties, and providing certainty of financial protection as agreed upon. Regarding whether an insurance policy can be categorized as joint property, it is necessary to first understand and describe joint property. The scope of joint property includes items or assets purchased during the marriage, even if registered in one party's name, assets proven to be acquired during the marriage, including joint business profits, income generated from joint assets or personal assets during the marriage, and assets built or purchased after divorce if using funds from joint assets.¹⁹

This joint property becomes the joint property of husband and wife and its management usually requires the agreement of both parties.²⁰ Property brought by each party, such as inheritances or gifts received before or during the marriage, is not included in joint property unless there is a different agreement. In short, joint property is wealth that is jointly acquired during marriage and becomes the joint property of husband and wife in accordance with legal provisions in Indonesia.²¹ Joint property is property acquired by a husband and wife during the marriage, starting from the time the marriage takes place until the marriage ends due to divorce, death, or a court decision.²² According to Article 35 of Law No. 1/1974, assets acquired during the marriage become joint property, regardless of who made the effort or in whose name the assets are registered.

Article 36(1) of the Law No. 1/1974 provides that: "Concerning joint property, either the husband or wife may act upon the consent of both parties." Meanwhile, Article 37 states: "Upon dissolution of marriage by divorce, the joint property shall be settled according to the applicable respective laws." A systematic reading of these provisions reveals an integrated legal structure for recognizing, managing, and dividing joint assets within marriage. If insurance premiums are paid during the marriage, the resulting insurance policy – regardless of its maturity status – constitutes an asset acquired during the marital union and is subject to joint ownership under Article 35(1). Furthermore, since the management of joint property requires mutual consent under Article 36(1), the acquisition of such a policy is not a unilateral financial act, but a shared contractual engagement. Accordingly, in the event of divorce, the rights to the policy must be examined within the broader legal framework of joint property distribution governed by Article 37.

¹⁹ Ahmad Syaerozi and Siti Maesaroh MHS, "Penyelesaian Sengketa Harta Bersama Berstatus Agunan," *Jurnal Hukum Dan Etika Bisnis Syariah* 1, no. 1 (2022): 1–25, <https://jurnal.iaihnwpancor.ac.id/index.php/alrasyad/article/view/543>.

²⁰ Adi Purwanto, "Analisis Hukum Atas Pembagian Harta Bersama Dalam Perkawinan Campuran Pada Putusan Mahkamah Agung Nomor 1400 K / Pdt /," *Recital Review* 4, no. 1 (2022): 90–113.

²¹ Abdul Kodir Alhamdani, *Hukum Harta Bersama Di Indonesia: Analisis Hukum Progresif Dan Kemaslahatan* (Purwakarta: Guemedia Group, 2023).

²² Suhermi Utami, Tiara Setyaranti and Sasmiar, "Penyelesaian Sengketa Harta Bersama Secara Mediasi," *Zaken* 4, no. 1 (2023): 144–62.

Articles 35–37 of the Law No. 1/1974 are designed to protect the shared economic interests of spouses throughout the marriage and to ensure equitable distribution of wealth upon its dissolution. The overarching purpose of the joint property regime is to promote financial balance and fairness between spouses, especially when one party contributes indirectly through domestic labor or caregiving. Thus, insurance policies funded with joint marital assets are not merely individual financial instruments but reflect the couple's collective effort to establish long-term financial security. To deny the classification of such policies as joint property would undermine the protective and equitable intent of the law. From this perspective, even if the insurance benefit has not yet materialized, the policy itself is part of the couple's shared financial planning. Therefore, a teleological interpretation strongly supports the recognition of insurance policies as marital assets in line with the law's broader objective of ensuring justice and mutual protection.

Historically, the concept of joint marital property in Indonesian family law is a synthesis of adat (customary law), Islamic legal traditions, and Western civil law, all of which emphasize economic unity within marriage. Analogies can be drawn from inheritance and gift jurisprudence, where the classification of assets often hinges on the origin of the funds and the intent behind the transaction. In this light, if insurance premiums are paid from joint property, the resulting policy should likewise be subject to joint ownership, regardless of whether the benefit has been claimed. Moreover, in practice, life insurance policies are frequently structured to protect the financial interests of the family unit, not merely of the named beneficiary. Consequently, treating such policies as personal property contradicts the underlying economic function they serve. Through historical and analogical reasoning, it becomes evident that insurance policies acquired during marriage—particularly those financed through joint funds—ought to be considered part of the marital estate under Indonesian family law.

The policy constitutes a written contract governed by the principles of civil contract law, whereas the insurance benefit represents an economic entitlement that arises upon the occurrence of the insured event. From a family law perspective, a policy purchased and maintained during the course of marriage may be regarded as a form of joint investment, even if the benefit itself has not yet materialized. Consequently, the existence of the policy alone may carry legal implications for the classification of marital property, regardless of whether the payout has been received. Furthermore, the designation of a beneficiary in the policy does not automatically extinguish a spouse's potential claim to the policy's economic value. Therefore, the classification of such property must consider not only the eventual payout, but also the source of the premium payments and the underlying intent behind the creation of the insurance contract.

The legal status of insurance policies and insurance funds arising from those policies remains a subject of debate in the context of marital joint property in Indonesia. Referring to Law No. 1/1974, assets acquired during the marriage are joint property, while assets acquired before marriage, gifts, or inheritances are not joint property.²³ There are two main viewpoints

²³ I Made Arya Dwisana and Made Gde Subha Karma Resen, "Pembuktian Harta Bersama Dalam Perceraian Perkawinan Campuran Tanpa Perjanjian Kawin Di Indonesia," *Acta Comitas* 6, no. 03 (2021): 561, <https://doi.org/10.24843/ac.2021.v06.i03.p8>.

regarding the status of insurance funds: firstly, insurance funds are considered joint property because insurance premiums are paid from joint assets during the marriage, thus the resulting indemnity funds also become part of the joint assets to be divided. Secondly, insurance funds are considered separate property of the party designated as the beneficiary in the policy, thus not part of the joint assets or inheritance, but rather a personal right directly received by the beneficiary. This difference arises because, materially, premiums are paid from joint assets, so insurance funds are considered the result of joint assets. Formally, the insurance policy stipulates that the indemnity is paid to the designated beneficiary, so the funds are not joint property but the beneficiary's right.

Insurance policies and insurance funds are not automatically categorized as joint property. Their status depends on the source of premium payments and the policy provisions, as well as the designation of the beneficiary. If the premiums are paid from joint assets, some parties consider the insurance funds as joint assets, but formally, insurance funds are more often considered the personal right of the beneficiary named in the policy, not joint assets to be divided in divorce or inheritance. Thus, an insurance policy can be categorized as joint property in certain contexts, but generally and according to applicable jurisprudence, insurance funds are viewed as the separate property of the policy beneficiary, not joint property.

Disputes regarding the status of insurance funds frequently arise in inheritance cases after the death of the insured. There are at least two court decisions with differing views on the status of such insurance funds. Firstly, the Supreme Court of the Republic of Indonesia Decision Number 16 K/AG/2010 dated April 30, 2010, ruled that half of the indemnity value, namely Rp50,000,000 (fifty million rupiah), is part of the inheritance to be divided among the heirs. This decision did not provide a specific interpretation of the indemnity funds, so its legal aspects have been considered clear since the first instance to the cassation level. Conversely, the Makassar High Religious Court Decision Number 59/Pdt.G/2009/PTA.Mks dated July 15, 2009, and the Makassar Religious Court Decision Number 732/Pdt.G/2008/PA.Mks dated March 2, 2009, stated that the insurance funds are part of the joint assets between the deceased and his wife, and also part of the inheritance.²⁴ This is because the funds originated from joint property and premiums paid during the insurance period. The panel of judges also affirmed that the designation of the wife as beneficiary in the insurance contract is purely administrative, because legally, heirs are not limited to the wife alone. Secondly, the Bandung Religious Court Decision No.: 168/Pdt.G/2012/PTA.Bdg dated July 19, 2012, to correct the Bekasi Religious Court Decision 1526/Pdt.G/2010/PA.Bks dated December 21, 2011, insofar as it concerns the review of indemnity funds, the decision was upheld by the Supreme Court of the Republic of Indonesia Decision Number: 197K/AG/2015 dated March 11, 2015.²⁵

The Bandung High Religious Court decision includes Supreme Court Case Number: 2831 K/Pdt/1996 dated 07/07/1999, which affirms that in insurance law, if an event occurs (an uncertain event/ death), the heirs are entitled to the indemnity, usually an individual, legal

²⁴ Oyo Sunaryo Mukhlas Sitti Mashitah Tualeka, "Pemikiran Hukum Tentang Harta Bersama Pada Lembaga-Lembaga Hukum Di Indonesia," *AL-AFKAR: Journal for Islamic Studies* 6, no. 3 (2023): 365-74.

²⁵ Sitti Mashitah Tualeka.

entity, or someone designated by the heirs to the police.²⁶ Furthermore, the insurance is not subject to the Marriage and Inheritance Law, so the insured property is not joint property or inheritance. It's clear from the two decisions above that the heirs of the person named in the policy view the insurance funds differently: as either joint property or as separate property. The first decision is more related to the reality of joint property insurance payments; thus, the insurance should be treated as joint property. The second decision, conversely, is more formal in nature and states that the parties named in the insurance are entitled to the indemnity. The second statement aligns with the insurance policy, which has become established jurisprudence and is also used in civil law. Considering this legal conflict, the position of the insurer needs to be re-analyzed using the insurance goal theory approach.²⁷

The risk transfer theory constitutes a foundational principle in insurance law, positing that the insured party transfers the potential for financial loss arising from unforeseen events to the insurer in exchange for the payment of premiums. Within the framework of family law and marital property, insurance premiums paid during the course of a marriage—sourced from joint income or assets—reflect a mutual interest in safeguarding the household's economic stability. This implies that insurance serves not merely a personal protective function, but also a collective one, as a risk mitigation tool for the shared estate. Consequently, when insurance benefits materialize, they should logically be treated as part of the joint assets, given that the premiums—the contractual input—are derived from a communal economic contribution.

In Indonesia's codified legal system, the risk transfer theory is explicitly accommodated through provisions in the Commercial Code (KUHD) and the Insurance Law, both of which affirm that risk shifts from the insured to the insurer upon the payment of premiums. However, the legal framework does not clearly address whether such transferred risk produces collective economic rights when premiums are paid from joint marital assets. Indonesia's civil law regime still requires doctrinal development to bridge the private nature of insurance contracts with the collective framework of family law.

The theory of insurable interest maintains that a person may only procure an insurance policy on a subject over which they have a legitimate legal or economic interest. Within the marital context, the law explicitly recognizes mutual legal and economic interests between spouses, thereby validating the notion that a policy issued in the name of one spouse may still represent a shared interest. Where premiums are paid from joint property, the legal relationship between the spouses establishes moral and financial claims over the resulting benefits, even if only one party is formally listed as the insured or designated beneficiary. This underscores that the naming of a beneficiary does not, in itself, extinguish the other spouse's potential claim to the economic value of the policy. In other words, a strictly formalistic approach to the beneficiary clause under contract law must be balanced by a substantive family law perspective.

²⁶ Sitti Mashitah Tualeka.

²⁷ Halimin Herjanto, Muslim Amin, and Cihan Cobanoglu, "Should I Use <scp>ChatGPT</Scp> Travel Insurance Recommendations? A Dual-Process Theory Perspective," *International Journal of Consumer Studies* 49, no. 2 (March 18, 2025): 3, <https://doi.org/10.1111/ijcs.70044>.

In Indonesia, the spousal relationship normatively gives rise to mutual legal interests forming the basis of various rights and obligations, yet its application in insurance law remains limited and primarily reliant on judicial interpretation. For instance, the designation of a wife as the policy's beneficiary does not automatically override the legal claims of children over the insurance proceeds, especially when the policy is funded by joint property. Indonesia maintains a more textual and administratively formal stance.

Insurance contracts are classified as aleatory agreements in both legal systems, their treatment in the marital context diverges considerably. In Indonesia, the aleatory nature of insurance policies is often used to justify the exclusion of insurance benefits from marital property, based on the argument that the benefit is contingent and not guaranteed, being determined by a third party (the insurer). However, this reasoning overlooks the fact that premiums are paid consistently and with certainty during the marriage—features characteristic of a commutative contract. Indonesia still requires adjustments to accommodate a reinterpretation of aleatory contracts in the family law context.

In Indonesia, the aleatory nature of insurance is often used as a legal argument to exclude insurance proceeds from marital property, on the basis that such proceeds are contingent and unguaranteed at the time of contract formation. Yet this reasoning ignores the reality that premiums are paid consistently and predictably throughout the marriage—characteristics that are more aligned with commutative contracts. Indonesia needs to re-evaluate how it interprets aleatory contracts in the context of shared marital wealth.

The legal elements of insurance in civil law include the agreement of the parties (consensus), legal capacity of the parties, a specific purpose, and a lawful cause (a valid reason for entering the contract).²⁸ Therefore, insurance in civil law is not merely a financial product but a legally binding contract governing the legal relationship between the insurer and the insured, and the mechanism for legally transferring risk. This regulation ensures legal protection for both parties in the execution of the insurance contract.

Law No. 40/2014 defines insurance as an agreement between two parties: the insurance company and the policyholder, forming the basis for the insurance company's receipt of premium payments. Based on this agreement, the insurance company is obligated to: (a) compensate the policyholder or insured party for losses, damages, costs, loss of profits, or legal liability to third parties that may arise from an uncertain event; or (b) provide benefits in the form of payments based on the death or continued life of the insured, the amount of which is determined by the policy provisions and/or based on the results of fund management.

In examining the status of life insurance funds as part of joint property, two main aspects need to be considered. *First*, the insurance premiums paid are derived from joint property acquired during the marriage. *Second*, if the event underlying the insurance claim does not occur during the marriage, the insurance benefits received can legally be considered part of the joint property because the funds were already a right of the insured within the marriage. The provision regarding the division of joint property after the end of a marriage is regulated in Article 96 paragraph (1) of the Compilation of Islamic Law (KHI), which states that in the

²⁸ Nishakanthi Gopalan, Siti Nurani Mohamed Noor, and Mohd Salim Mohamed, "The Pro-Medical Tourism Stance of Malaysia and How It Affects Stem Cell Tourism Industry," *SAGE Open* 11, no. 2 (2021), <https://doi.org/10.1177/21582440211016837>.

event of a divorce, each party is entitled to half of the joint property. Therefore, when related to the purpose of the insurance agreement, even if the insurance premiums are paid using joint funds, if the insurance is intended to protect against losses (loss insurance), then the insurance benefits from a civil law perspective are not included in the category of joint property or inheritance. Conversely, in the case of life insurance, the indemnity can be classified as joint property or personal property (brought-in property), depending on the origin of the funds used for premium payments.

3.2. Regulation of Insurance Policies as Joint Property: A Comparative Perspective from Indonesia and England

The state regulates insurance policies to provide legal protection to policyholders, ensuring that the rights and obligations of both parties (insured and insurer) are clear and fair.²⁹ This regulation is enshrined in various laws, such as Law No. 40/2014, which emphasizes the need to protect the rights of policyholders in the event of disputes or problematic claims. Clear regulations build public trust in insurance products. The state mandates that insurance companies meet certain standards, ensuring that premium funds collected from the public are managed soundly and securely. This is crucial to prevent cases of default or claim rejection that harm consumers.³⁰ The state, through the OJK (Financial Services Authority) and the planned establishment of the Policy Guarantee Institution (LPS) oversees the financial health of insurance companies.³¹ With a strict selection and supervision system, only healthy insurance companies are allowed to operate, so that the risk of loss for policyholders can be minimized.³²

An insurance policy is a written document serving as legal proof of an insurance agreement. The policy details the rights, obligations, terms, and conditions binding both parties. The state regulates policy terms to prevent unfair treatment of either party and to provide a basis for dispute resolution. State regulations are continuously updated to reflect the dynamics of the insurance industry and societal needs, ensuring that protection and oversight remain relevant and effective in addressing new challenges in the financial sector. In Indonesia, insurance policy regulations are generally governed by the Insurance Law and regulations from the OJK, specifically POJK Number 8 of 2024 concerning Insurance Products and Marketing Channels for Insurance Products. This regulation covers types of insurance

²⁹ I Wayan Werasmana Sancaya and I Made Aditya Mantara Putra, "Tanggungjawab Perusahaan Angkutan Terhadap Kerugian Yang Ditimbulkan Akibat Kelalaian Pengemudi Selama Kegiatan Penyelenggaraan Pengangkutan," *Kertha Wicaksana* 15, no. 1 (2021): 47-43, <https://doi.org/10.22225/kw.15.1.2822.47-43>.

³⁰ Christine Dowuona-Hammond, Richard Adjei Kyeremateng, and Ama F. Hammond, "Product Liability and E-Commerce in Ghana: Focusing Ghana's Regulatory Framework on Consumer Protection," *Business Law Review* 45, no. 6 (December 2024): 154-67, <https://doi.org/10.54648/BULA2024020>.

³¹ Muhammad Gaidy Wiratama, Bambang Sugeng Ariadi Subagyo, and Mochamad Kevin Romadhona, "Implementation of Legal Efforts Consumer Protection and Dispute Settlement of Social - Health Insurance Participants for Indonesian Migrant Workers," *Malaysian Journal of Medicine and Health Sciences* 19, no. 4 (2023): 9-17.

³² Robert Sparrow, Teguh Dartanto, and Renate Hartwig, "Indonesia Under the New Normal: Challenges and the Way Ahead," *Bulletin of Indonesian Economic Studies*, 2020, <https://doi.org/10.1080/00074918.2020.1854079>.

products, policy content, premiums, and procedures for marketing and policy delivery, including electronic policies (e-policies).³³

Policies can be issued in printed (hardcopy) or digital/electronic form, with the approval of the policyholder.³⁴ Even with digital policies, a printed summary must be provided. Policies must be written clearly and in a manner easily understood by the policyholder, including bolding or italicizing exclusion clauses or risk limitations to prevent interpretations that could disadvantage the policyholder. Policyholders have the right to study the policy and understand their rights and obligations. The policy serves as proof of the binding agreement between the insurance company and the policyholder. Insurance companies are required to implement good governance, report their activities to the OJK, and comply with anti-money laundering and terrorism financing prevention policies. Insurance policy regulations in Indonesia emphasize transparency, consumer protection, and legal certainty through detailed policy content provisions and flexible policy formats (print and electronic). These regulations also ensure that insurance companies maintain sound and responsible governance.

The intersection between contract law (private/commercial law) and family law generates significant legal tension when an insurance policy is issued in the name of one spouse but funded from joint marital resources. In Indonesia, this conflict arises between the principle of contractual autonomy under the Civil Code and the concept of joint property as outlined in Article 35 of Law No. 1/1974. The core legal question is whether personal autonomy in entering insurance agreements can override a spouse's legal entitlement to jointly funded property. In the English context, the tension lies between freedom of contract in insurance law and the equitable distribution principles embedded in family law. The common law system allows courts to adjust or reinterpret contractual effects to achieve a fair division of property, particularly when an insurance policy represents a significant financial asset. Indonesia lacks a statutory framework to address this intersection explicitly, compelling courts to rely on analogy and judicial interpretation to resolve such conflicts.

The evolution of insurance policy regulations in Indonesia attempts to address the relationship between insurance policies and joint property. Generally, in Indonesia's civil law system, based on legislation, there are no regulations explicitly defining the relationship between insurance policies and joint property.³⁵ The relevance between insurance policies and joint property in Indonesia has evolved primarily through jurisprudence, or Supreme Court decisions, which are then referenced or followed by subsequent rulings. Although Indonesia has a civil law system, the use of jurisprudence is frequent, especially when clear regulations are lacking and courts are expected to make decisions through legal interpretation.³⁶ As

³³ Dwi Prasetya, "The Role of Digital Contracts in The Insurance Business and Their Relationships on Digital Signature Using PrivyID."

³⁴ Guntur Prabawa Kusuma et al., "Implementing Process Mining in Indonesia Health Care: Challenges and Potentials," *IJAIT (International Journal of Applied Information Technology)* 07, no. 01 (2023): 62, <https://doi.org/10.25124/ijait.v7i01.4688>.

³⁵ Kiki Kristanto, Christio Drakhma Dekapolis, and Isno Pandowo, "Customary Law as Part of the Reform Legal System in Indonesia," *Focus Journal Law Review* 3, no. 2 (November 2023), <https://doi.org/10.62795/fjl.v3i2.227>.

³⁶ Dicky Eko Prasetyo, "Ius Constituendum Legal Standing Bagi WNA Terkait Proses Judicial Review Di Mahkamah Konstitusi Dalam Perspektif HAM," *Hunila* 2, no. 1 (2023): 125–38.

explained previously, several court or Supreme Court decisions have addressed the issue of insurance policies and joint property contextually. This means that determining whether an insurance policy is considered joint property depends on the specific context and legal relationship involved.

In Indonesian jurisprudence, the key considerations regarding the status of life insurance funds as joint property are the source of premium funds and the timing of the claim. If premiums are paid from joint property during the marriage, life insurance funds can be classified as part of the joint property, particularly if the claim matures while the marriage is still valid. However, under civil law, insurance benefits that protect against losses (loss insurance) are not considered joint property or inheritance. In practice, determining the status of life insurance funds depends on the type of insurance and the source of its premium financing, as regulated in Article 96 paragraph (1) of the KHI, which governs the division of joint property after a divorce.

In Indonesia, jurisprudence has evolved to recognize the status of life insurance proceeds as potential joint property, even though judicial precedent is not considered a formal source of law in civil law systems. For example, the Supreme Court Decision No. 102 K/AG/2011 acknowledged that life insurance proceeds funded with marital assets during the marriage could be classified as joint property, especially if the payout occurs before the dissolution of the marriage. The court's *ratio decidendi* emphasized the source of premium payments as the determinative factor in classifying the asset. However, there is often no clear judicial distinction between life insurance and indemnity-based insurance, leading to inconsistent outcomes. Thus, a more coherent and standardized judicial framework is needed – one that evaluates the substance of the financial interest rather than its formal contractual structure. A systematic review of Supreme Court and Religious Court jurisprudence is necessary to clarify the legal position of insurance policies in Indonesian family law.

Similar to Indonesia, the regulation of insurance policies and their relationship to joint property is also part of legal developments in England. England, as a common law country, has a distinct legal system rooted in English legal tradition.³⁷ The common law system heavily relies on precedent, meaning that previous court decisions serve as the primary source of law that must be followed by courts in similar cases in the future.³⁸ The doctrine of *stare decisis* binds judges to respect and apply previous decisions in order to create legal certainty and consistency.³⁹ Judges not only apply written law, but also play an active role in interpreting and developing the law through their decisions.⁴⁰ Law evolves incrementally based on the cases decided. Judicial proceedings are adversarial, with the judge acting as an arbiter while

³⁷ Paula GILIKER, "Legal Ignorance in England and Wales: A Study of Contract, Tort, Unjust Enrichment and Civil Procedure Law," *European Review of Private Law* 29, no. 2 (2021): 197–222, <https://doi.org/10.54648/erpl2021012>.

³⁸ Kaharudin, Gatot Dwi Hendro Wibowo, and M. Ilwan, "Structuring Legislation Through Omnibus Law: Opportunities And Challenges In The Indonesian Legal System," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1–11.

³⁹ Roberth Kurniawan Ruslak Hammar, "Exploring the Intersection of Common Law and Criminal Justice System: Implications for Protecting Freedom of Speech in Indonesia," *International Journal of Criminal Justice Sciences* 17, no. 2 (2022): 299–311, <https://doi.org/10.5281/zenodo.4756126>.

⁴⁰ Ahmad Zaenal Fanani, "Hermeneutika Hukum Sebagai Metode Penemuan Hukum: Telaah Filsafat Hukum" (<http://pa-bengkulukota.go.id>, 2021).

the parties present evidence and arguments. The judge assesses the evidence presented, and decisions often involve a jury, representing the community, in determining the facts.⁴¹ Because law is shaped through judicial decisions, the common law system is more flexible and adaptable to societal changes and needs compared to legal systems that rely solely on written codifications.⁴² While precedent is paramount, legislation also serves as an authoritative source of law, particularly when no relevant precedent exists.

However, judicial decisions remain foundational in most cases. In short, the English common law system emphasizes jurisprudence as the primary source of law, binding judges to precedent, employing an adversarial system in court proceedings, and allowing the law to evolve dynamically to meet societal needs.⁴³

Insurance policy regulation in the UK is based on the common law system, which prioritizes precedent and court decisions as the primary sources of law, although legislation also plays a significant role. Insurance policies in the UK are subject to English law and practice, meaning any disputes related to insurance policies will be resolved according to English legal procedures.⁴⁴ Insurance policies, such as marine cargo insurance policies, typically include a clause stating that the policy is subject to English law and practice. This provides legal certainty and consistent dispute resolution standards. Insurance law in England is heavily influenced by previous court decisions (jurisprudence). Judges play a crucial role in interpreting and developing insurance law based on previous cases, making insurance law a dynamic field that adapts to changing needs.

English insurance law and practice are known to favor insurance companies (insurers). For example, insurance companies have the right to void insurance contracts if there is non-disclosure (failure to disclose information) or misrepresentation by the insured, even if it is minor or not directly related to the claim. The Law Commission for England and Wales has proposed several reform proposals to improve provisions that are considered detrimental to the insured, particularly regarding disclosure obligations and misrepresentation before the insurance contract is made.⁴⁵ The English common law system lacks a comprehensive codification of insurance law like civil law systems, so insurance law has developed primarily through court decisions and industry practice.

Insurance policy regulation in England refers to common law, which prioritizes precedent and court decisions, with legal practices that tend to favor insurance companies. Insurance policies typically include a clause stating English law as the basis for dispute resolution, and although there are criticisms of pro-insurer provisions, there are reform efforts to balance protection for the insured. In short, in England, insurance policies acquired or

⁴¹ Salahuddin Gaffar et al., "The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia," *Heliyon* 7, no. 4 (2021): e06690, <https://doi.org/10.1016/j.heliyon.2021.e06690>.

⁴² Michael Bogdan, *Pengantar Perbandingan Sistem Hukum* (Bandung: Nusamedia, 2019).

⁴³ Raju Moh Hazmi, Asep Saepudin Jahar, and Nurul Adhha, "Construction of Justice, Certainty, and Legal Use in the Decision of the Supreme Court Number 46 P/HUM/2018.," *Jurnal Cita Hukum* 9, no. 1 (2021): 159-78, <https://doi.org/10.15408/jch.v9i1.11583>.

⁴⁴ Vladimir Belykh, "Insurance Interest under the Law of England," *Bulletin of the Karaganda University. "Law" Series* 30, no. 1 (117) (March 27, 2025): 98-105, <https://doi.org/10.31489/202511/98-105>.

⁴⁵ Belykh.

whose value increases during marriage are typically considered marital property and can be divided upon divorce, with special consideration given to the source of funds and agreements between the parties involved.

In England, insurance policies are not automatically considered part of marital property like the concept of “*harta gono-gini*” in Indonesia. This is because the English legal system (common law) regulates the division of marital property based on different principles and rules than the civil law system in Indonesia. If insurance premiums are paid using joint funds (e.g., income or property acquired during marriage), then the value of the policy or insurance benefits can be considered a joint asset to be divided upon divorce or property division. Insurance policies typically specify a designated beneficiary. If the beneficiary is one of the spouses, then the insurance benefits will be received directly by the beneficiary, not as part of the marital property. In divorce or property division proceedings, English courts can consider insurance policies as assets to be divided, especially if the policy has significant cash value or benefits and the premiums were paid from joint property. If there is a prenuptial agreement that regulates the separation of property, then the insurance policy can be excluded from marital property according to the agreement. Briefly, insurance policies in England are not automatically marital property, but they can be included in the assets to be divided based on the facts of premium payment and court decisions regarding property division. The designation of the beneficiary also plays a significant role in determining the status of the policy.

The decisions in *White v. White* [2001] and *Miller v. Miller* [2006] provide pivotal precedents in English family law regarding the treatment of assets—including insurance policies—during divorce proceedings. In *White*, the House of Lords held that fairness required a non-discriminatory approach to financial and non-financial contributions within a marriage, thus mandating equal consideration of all assets acquired during the marriage. *Miller* extended this doctrine by affirming that even in short-lived marriages, fairness might justify an equal or proportionate division of assets, regardless of direct contribution. Although insurance policies were not directly examined in these cases, the underlying rationale supports the inclusion of such financial instruments as divisible marital property. These rulings reinforce the English courts’ broad discretionary power in achieving equitable outcomes, particularly where formal legal ownership does not reflect economic reality.

From the above explanation, it can be concluded that the main similarity between Indonesia and England regarding the status of insurance policies in the context of marital property is that both recognize the importance of the source of premium funds and the time of the claim in determining whether insurance benefits can be categorized as part of marital property. Both in the civil law system in Indonesia and the common law system in England, insurance policies paid with funds originating from joint property during the marriage have the potential to be considered part of the joint assets to be divided upon divorce or property division. In both countries, the legal status of insurance policies is not explicitly regulated in legislation as part of marital property, so both Indonesia and England rely on legal interpretation through court decisions to provide legal certainty in concrete cases.

In Indonesia, the foundational principle governing the formation of joint marital property is enshrined in Article 35 of Law No. 1/1974, which stipulates that all assets acquired

during the marriage constitute joint property. In contrast, the English legal system emphasizes substantive fairness, with courts considering each spouse's contribution to the acquisition and accumulation of assets, as established in landmark rulings such as *White v. White* [2001]. While Indonesia adheres to the principle of *pacta sunt servanda* in enforcing insurance contracts as binding civil agreements, English law allows public policy considerations to intervene, particularly in family law matters. This includes the application of equitable doctrines such as *constructive trust* and *unjust enrichment* to override formal legal entitlements where justice demands it. Beneficiary clauses within insurance contracts are interpreted differently in both jurisdictions, English courts may displace formal assignments where fairness requires it, whereas Indonesian courts remain largely formalistic, emphasizing contract terms and the source of premium funding.

There are fundamental differences that stem from the nature of each country's legal system. In Indonesia, which follows the civil law system, written law is the primary basis, but in the absence of clear rules, the jurisprudence of the Supreme Court is an important reference. Jurisprudence in Indonesia is used as a tool for legal discovery when legislation does not explicitly regulate the status of insurance policies in marital property, and the approach tends to be contextual according to the legal relationship between the parties in the marriage. Meanwhile, in England, as a country with a common law system, precedent or previous court decisions are the primary source of binding law (the doctrine of *stare decisis*), and the law develops dynamically based on judicial decisions. Insurance law in England is also more influenced by industry practice and judicial interpretation, not written codification. In practice, courts in England consider whether the premiums were paid from joint property and whether the policy has significant cash value or benefits in determining whether the insurance policy should be divided in divorce proceedings. Furthermore, England has a more flexible approach in evaluating the status of insurance policies, including considering prenuptial agreements and the specific designation of beneficiaries. This means that if one spouse is designated as the beneficiary, then the insurance benefits can be received directly personally, not divided as marital property, unless there are specific considerations from the court. In Indonesia, such considerations are more dependent on the legal construction of court decisions based on principles in the Compilation of Islamic Law and relevant jurisprudence. Thus, although both countries have different approaches based on their legal systems, they both show similar tendencies in assessing the status of insurance policies in the context of marital property, contextually and based on the facts of individual cases.

The normative implications of this analysis are substantial for the reform of family law in Indonesia. First, the Law No. 1/1974 or the KHI should explicitly regulate the distribution of insurance benefits acquired during marriage. Second, beneficiary clauses in insurance contracts should be subject to the principle of equitable distribution in family law, especially when premiums are paid from joint assets. Third, the law should consider a default rule classifying insurance policies as part of the marital estate unless excluded through a prenuptial agreement. These reforms would provide greater legal certainty and ensure that the financial realities of modern families – many of whom use insurance as a wealth accumulation tool – are properly reflected in Indonesian marital property regimes. Moreover, such alignment with

comparative legal principles would allow Indonesia to adopt more equitable and predictable standards in matrimonial property division.

4. Conclusions

The legal status of insurance policies as marital property in Indonesian family law, as affirmed by various laws and court jurisprudence, clarifies that in the context of loss insurance, even if the premiums originate from joint property, the insurance benefits are not categorized as part of marital property or inheritance because their purpose is to compensate for losses, not to accumulate wealth. Conversely, for life insurance, the death benefit can be considered marital property or personal property depending on the source of the premium funds used, so determining its legal status requires careful consideration of the contract, purpose of insurance, and origin of funds. A comparison of the legal regulations for insurance policies as marital property in Indonesian and English family law shows that both recognize the importance of the source of premium funds and the time of the claim in determining whether an insurance policy is included in marital property, although neither explicitly regulates it in legislation. The main difference lies in their legal systems; Indonesia relies on jurisprudence as a tool for legal discovery in a civil law system, while England relies on binding precedent in a common law system. Despite different approaches, both show similarities in assessing the status of insurance policies based on the context and legal facts surrounding each case.

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