

Credit Insurance as a Legal Risk Mitigation Mechanism in Promoting Stability and Soundness in the Banking Industry

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Abstract

Credit insurance serves as a strategic legal and financial instrument designed to mitigate credit risk in the banking industry. By insuring potential default losses from borrowers, credit insurance operates not only as a risk transfer mechanism but also as a form of legal protection that enhances the resilience and soundness of banks. This paper applies legal protection theory and the theory of the function of law as the main analytical tools to examine how credit insurance contributes to financial stability. Using a normative legal research method, supported by statutory and conceptual approaches, this study finds that the existing regulatory framework in Indonesia while providing a foundation remains insufficient in ensuring effective legal protection for stakeholders. Thus, there is a need for regulatory enhancement, better supervision, and stronger dispute resolution mechanisms to ensure that credit insurance functions optimally in supporting banking health and financial system stability. Indonesia's regulatory landscape for insurance and banking has evolved significantly, particularly following the enactment of Law No. 40 of 2014 on Insurance and Law No. 21 of 2011 on the Financial Services Authority (OJK). These laws outline the general principles of insurance activities and establish supervisory mechanisms to ensure market integrity. However, specific regulations on credit insurance especially as it pertains to banking risk remain underdeveloped. There is limited guidance on underwriting standards, premium calculation, claims procedures, and dispute resolution mechanisms tailored for credit insurance involving financial institutions. As such, the current framework provides only partial legal certainty and lacks the robustness required to support an effective credit insurance regime in the banking context.

Keywords: Credit Insurance, Legal Protection, Non Performing Loans, OJK Regulation, Legal Theory

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1. Introduction

The banking sector, as the lifeblood of economic activity, is unavoidably exposed to a myriad of risks, with credit risk standing out as one of the most formidable. At its core, credit risk reflects the potential loss that a bank may suffer when a borrower fails to meet contractual debt obligations, particularly in the form of non-performing loans (NPLs). As credit constitutes the primary activity through which banks generate income, an accumulation of NPLs can severely erode a bank's capital reserves, impair its ability to extend further credit, and jeopardize its long-term viability. More critically, if such risks are left unmitigated, they may trigger broader systemic consequences, including diminished public trust, depositor flight, financial contagion, and, in worst-case scenarios, banking crises with macroeconomic ramifications. In this precarious environment, credit insurance emerges as a pivotal legal and financial instrument with both preventive and compensatory functions. At the preventive level, it incentivizes prudent credit underwriting and promotes risk-sharing between financial institutions and insurers. At the compensatory level, it provides a legal mechanism for indemnification, enabling



banks to recover a portion of losses resulting from borrower default. From a contractual standpoint, credit insurance is governed primarily by the principles of private law, particularly the law of contracts and insurance. However, its practical significance transcends private interests and enters the domain of public law and regulatory policy, owing to its potential to contribute to financial system stability.

While traditionally treated as a private commercial product, credit insurance has increasingly attracted the attention of regulators, legislators, and legal scholars, especially in emerging markets such as Indonesia. The growing complexity of financial markets and the increasing incidence of credit defaults particularly in the wake of global financial downturns have compelled policymakers to revisit the legal status and regulatory design of credit insurance. Its function is now being reconceptualized not only as a means of financial risk transfer but also as a tool of legal protection for banks, depositors, and ultimately the broader public. This article seeks to explore the legal construction, function, and implications of credit insurance in supporting the soundness of the banking sector, using a legal-theoretical approach. In particular, it applies two interrelated frameworks: (i) the legal protection theory, and (ii) the theory of the function of law. These theories serve as analytical lenses through which the role of law in structuring, enabling, and supervising credit insurance practices may be critically assessed.

The legal protection theory, as articulated by Philipus M. Hadjon, emphasizes the importance of both preventive and repressive legal protections afforded to citizens and institutions within the legal system. Preventive protection ensures that rights and obligations are clearly defined in legal norms, thereby reducing the likelihood of disputes. Repressive protection, by contrast, pertains to the availability of legal remedies when those norms are violated. When applied to the context of credit insurance, this theory illuminates the degree to which current laws and regulations shield financial institutions from unfair practices, legal uncertainty, or institutional default by insurers. Complementing this is Lawrence M. Friedman's theory of the function of law, which conceptualizes the legal system as comprising three interdependent dimensions: legal structure, legal substance, and legal culture. The structure includes institutions such as courts, regulators, and law enforcement agencies; the substance includes statutory provisions and regulatory rules; and culture refers to the attitudes, practices, and compliance behavior of stakeholders. A functional legal system is one in which these three elements align harmoniously. Credit insurance, in this regard, operates effectively only when supported by a well-designed regulatory framework, efficient supervisory institutions, and a legal culture that values accountability, transparency, and compliance.

In the Indonesian legal system, credit insurance is regulated under general insurance laws, particularly Law No. 40 of 2014 on Insurance, which provides a broad legal basis for insurance operations in the country. Oversight is vested in the Financial Services Authority (Otoritas Jasa Keuangan or OJK), established under Law No. 21 of 2011, which is empowered to issue regulations, conduct inspections, and impose sanctions. Further guidelines are set out in secondary regulations such as POJK No. 69/POJK.05/2016 on Insurance Business Implementation. However, these legal instruments do not yet contain specific provisions tailored to credit insurance as a product directly tied to banking sector health. The absence of granular regulatory directives particularly regarding underwriting standards, risk-based pricing, claim settlement mechanisms, and capital adequacy of insurers leads to inconsistencies in implementation and undermines the legal certainty that credit insurance is meant to provide. Moreover, from a comparative legal standpoint, several jurisdictions have adopted more structured approaches. For instance, Germany utilizes public-private partnership models where credit insurers operate under state backing, particularly in the context of export and trade finance. Similarly, South Korea has integrated credit insurance into its broader national financial risk management strategy through institutions such as the Korea Trade Insurance Corporation



(K-SURE). These models recognize credit insurance not merely as a market product but as a regulatory policy tool with public interest implications. They embed legal safeguards for insurers and insured alike, enhance claims transparency, and enforce dispute resolution mechanisms through specialized tribunals or administrative bodies.

In contrast, the Indonesian legal environment reflects a nascent and fragmented development of such mechanisms. The absence of a dedicated legal regime for credit insurance tailored to the needs of banks results in legal uncertainty in contractual interpretation, ambiguous risk allocation, and delays in claims realization factors that can undermine both the microprudential and macroprudential objectives of credit insurance. These conditions also raise questions concerning the duty of good faith, doctrine of utmost good faith (*uberrimae fidei*) in insurance law, and the insurer's duty of disclosure, which, when inadequately enforced, may prejudice the insured party's legal standing. Furthermore, the intersection between credit insurance and banking supervision introduces another layer of legal complexity. Regulators such as OJK and Bank Indonesia have yet to fully integrate credit insurance into prudential supervision frameworks. Credit insurance coverage is rarely factored into stress testing, provisioning models, or capital adequacy calculations, which limits its utility as a risk mitigant in regulatory capital regimes under frameworks such as Basel III. Thus, there is a disconnection between legal form and economic function, wherein credit insurance is legally recognized but not fully embedded into banking risk management or regulatory architecture.

This disjunction calls for a normative legal response one that does not merely restate existing laws but actively interrogates their capacity to address new and evolving risks in the banking sector. A reformist legal agenda should aim to clarify the status of credit insurance contracts, standardize terms and conditions, enhance solvency standards for insurers offering credit insurance, and establish expedited alternative dispute resolution (ADR) forums for contractual disputes. In this context, this article adopts a doctrinal legal research method, supported by statutory analysis, comparative law perspectives, and conceptual legal inquiry. The objective is to evaluate the extent to which existing legal instruments in Indonesia provide effective protection for banking institutions utilizing credit insurance and to identify normative gaps and inconsistencies that may hinder the functionality of this instrument. Ultimately, the introduction of robust legal norms and supervisory practices will be essential to actualize the promise of credit insurance as both a financial safeguard and a legal protection mechanism. In doing so, the legal system can play a constructive role in ensuring that banks operate within a secure, predictable, and legally protected environment, thereby reinforcing trust, promoting responsible lending, and enhancing the resilience of the national financial system.



2. Method

This study employs a normative legal research method, focusing on the analysis of legal norms, doctrines, and regulatory frameworks that govern credit insurance in Indonesia. Normative legal research is primarily concerned with the internal coherence, consistency, and adequacy of legal instruments in addressing specific problems in this case, the role of credit insurance in supporting banking sector soundness. To that end, the study integrates several interrelated approaches. First, the statutory approach is used to examine relevant Indonesian legislation, including Law No. 40 of 2014 on Insurance and Law No. 21 of 2011 on the Financial Services Authority (Otoritas Jasa Keuangan/OJK). These statutes provide the foundational legal framework for insurance activities and financial sector supervision in Indonesia. Secondary regulations, such as OJK Regulations (Peraturan OJK or POJK), are also analyzed to assess their sufficiency in governing credit insurance specifically. Second, a conceptual approach is adopted by applying theoretical frameworks that elucidate the function of law and the nature of legal protection. This includes Philipus M. Hadjon's theory of legal protection, which distinguishes between preventive and repressive legal safeguards, and Lawrence M. Friedman's theory of the function of law, which underscores the interplay between legal structure, legal substance, and legal culture. These conceptual tools are instrumental in evaluating the extent to which existing legal arrangements fulfill both normative expectations and practical requirements in the context of credit insurance.

Third, the research employs a comparative approach, which involves reviewing regulatory frameworks and legal practices in other jurisdictions with more advanced or structured credit insurance systems. Examples include Germany, which utilizes public-private partnerships in the context of export credit insurance, and South Korea, where credit insurance is integrated into national financial risk management strategies. By comparing these models with the Indonesian context, the study seeks to identify best practices and assess the feasibility of adapting such frameworks to local conditions. Data for the study are derived from primary legal materials (statutes, regulations, and court decisions) and secondary sources (doctrinal writings, academic commentaries, and policy reports). The research does not involve empirical or statistical analysis but instead focuses on the normative evaluation of legal rules and institutional arrangements. The ultimate goal is to identify gaps, inconsistencies, or weaknesses in the current legal system and to propose legal reforms that can enhance the functionality, certainty, and protective value of credit insurance for the banking industry in Indonesia.

3. Results and Discussion

The Nature and Legal Position of Credit Insurance

Credit insurance is a contractual agreement in which an insurer compensates the insured party against losses arising from borrower defaults. From a legal standpoint, it constitutes a commercial insurance contract governed by the Indonesian Civil Code and the Insurance Law. Its primary function is to:

- a) Minimize credit risk,
- b) Reduce provisioning burdens on banks,
- c) Enable banks to expand credit without significantly increasing systemic risk.

Credit insurance plays a crucial role in modern financial and banking systems by mitigating risks associated with loan defaults. Legally, credit insurance constitutes a commercial insurance contract, governed primarily by the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata) and Law Number 40 of 2014 concerning Insurance (hereinafter "Insurance Law"). This discussion explores its legal classification, contractual nature, regulatory framework, and implications for credit risk management within the Indonesian legal context.

From a doctrinal legal perspective, credit insurance is classified as a contract of indemnity, whereby the insurer (penanggung) undertakes to indemnify the insured party (tertanggung) in the event of loss arising from debtor default. It falls within the broader category of property

insurance, as the insured object is a receivable (piutang) or financial interest arising from a credit agreement. Article 246 of the Indonesian Civil Code defines an insurance contract as an agreement whereby one party binds itself to the other by receiving a premium to bear a risk.

Credit insurance is thus a consensual contract that materializes upon agreement between parties. The insurer's obligation arises when the debtor fails to meet their payment obligations. The default event must fall within the scope of the insured risks explicitly agreed upon in the policy. The policyholder, typically a bank or a financing institution, must demonstrate actual loss, causality, and proof of debtor non-performance. The legal standing of credit insurance is firmly rooted in statutory law. In addition to the Civil Code, the Insurance Law No. 40/2014 mandates that all insurance operations be conducted by registered and licensed insurance providers under the supervision of the Financial Services Authority (OJK - Otoritas Jasa Keuangan). Credit insurance is categorized as "loss insurance" (asuransi kerugian) under Article 1 point 1 of the Insurance Law. Under this regime, insurance companies must comply with prudential principles, solvency requirements, and consumer protection norms. The contract must be documented clearly in a policy (polis) and specify the insured risk, premium, insured amount, and claims procedures. Moreover, the policy must adhere to the principle of utmost good faith (uberrimae fidei) both insurer and insured are obligated to disclose material facts affecting the risk.

Furthermore, credit insurance instruments must align with Bank Indonesia regulations and risk management principles under OJK Regulation No. 1/POJK.05/2015 on Risk Management for Insurance Companies. Banks that use credit insurance as a risk transfer mechanism must assess the validity and enforceability of insurance coverage before calculating their capital adequacy or loan provisioning.

Functional Role in the Banking Sector

From a functional standpoint, credit insurance serves three principal objectives:

- a) **Minimizing Credit Risk:** Credit insurance reduces the exposure of banks and financial institutions to borrower defaults, thereby stabilizing their loan portfolios. It acts as a credit enhancement tool and mitigates the moral hazard of excessive risk-taking.
- b) **Reducing Provisioning Burden:** By insuring against default, banks may lower the need to allocate large reserves or provisions for non-performing loans, subject to regulatory approvals. This frees up capital for other productive uses.
- c) **Facilitating Credit Expansion:** With reduced default risk, banks can expand their lending operations without proportionally increasing systemic risk. This function is vital in promoting credit access for small and medium enterprises (SMEs), which often lack sufficient collateral.

Legal Challenges and Risk Considerations. Despite its advantages, credit insurance presents several legal challenges. One critical issue is claim repudiation insurers may deny claims on the basis of technical exclusions, misrepresentations, or late notifications. Disputes may also arise regarding the interpretation of policy terms, the scope of insured risks, and proof of loss.

In judicial practice, courts assess the contractual good faith of the parties and the reasonableness of the insurer's refusal to pay. Courts also consider whether the bank fulfilled its disclosure obligations and whether the debtor's default fits within the insured event.

Additionally, insurers and banks must be vigilant about compliance with anti-money laundering (AML) and know-your-customer (KYC) obligations to prevent misuse of credit insurance instruments.

Legal Protection Theory Perspective

According to Philipus M. Hadjon, legal protection includes both preventive and repressive protections. Credit insurance offers:

- a) Preventive protection by requiring due diligence and risk assessment before coverage is granted.
- b) Repressive protection through the claim process once a default occurs.

In this sense, credit insurance reinforces legal certainty and equity in credit relationships between banks, borrowers, and insurers. The concept of legal protection is a fundamental principle in legal theory and practice. As formulated by Philipus M. Hadjon, legal protection is divided into two main categories: preventive and repressive. This classification provides a useful lens through which to examine the legal function and utility of credit insurance. Within the Indonesian legal system, credit insurance not only serves a commercial and financial role but also provides a structured mechanism for safeguarding the legal interests of banks, borrowers, and insurers alike.

Philipus M. Hadjon, a leading Indonesian legal scholar, conceptualizes preventive legal protection as protection given before a dispute arises. This type of protection is centered around legal certainty, transparency, and access to information, enabling parties to avoid legal conflict through well-regulated relationships. Repressive legal protection, in contrast, refers to remedial mechanisms that address rights violations or disputes that have already occurred. It includes litigation, administrative appeals, and claim mechanisms. Both forms of legal protection aim to ensure the realization of justice and fairness in legal relationships. When applied to financial and insurance contexts, they help secure trust, accountability, and predictability cornerstones of a well-functioning legal and economic system.

Credit insurance functions as a preventive legal mechanism in various ways. The issuance of a credit insurance policy involves a thorough due diligence process, where the insurer evaluates the creditworthiness of borrowers and the risk profile of loans. This assessment requires accurate documentation, background checks, financial disclosures, and often credit scoring. These steps not only inform the premium pricing and coverage terms but also encourage responsible lending practices by financial institutions. This process prevents moral hazard by compelling both lenders and borrowers to behave prudently. Insurers impose policy conditions that restrict lending to high-risk individuals or companies, thereby indirectly regulating credit allocation and preventing unsound credit behavior. In this regard, credit insurance acts as a legal instrument to minimize future disputes, providing a safeguard mechanism embedded within the contractual obligations. Moreover, the clarity of contractual provisions such as the definition of "default," the scope of covered risks, and claim procedures promotes legal certainty. Preventive protection is further enhanced by requiring disclosure obligations under the principle of *uberrimae fidei* (utmost good faith), which applies to all insurance contracts under Indonesian law.

When a credit event, such as borrower default, occurs, credit insurance activates its repressive legal protection function. This is primarily realized through the insurer's obligation to compensate the insured party, usually a bank or financial institution, according to the policy terms. This form of protection serves as a remedy for financial loss and reduces the consequences of borrower insolvency. In practice, the claims process involves proof of default, submission of supporting documents, and verification by the insurer. If the claim is valid, indemnification ensures that the insured party is restored, at least financially, to the position they were in prior to the default. This mechanism provides post-event justice and enables banks to continue lending activities without bearing disproportionate risks. Where disputes arise regarding claim denials or interpretation of policy terms, parties may seek resolution through negotiation, mediation, or litigation. This process constitutes an integral part of repressive legal protection, offering institutional avenues for redress and dispute resolution.

By integrating both preventive and repressive elements, credit insurance strengthens equity and fairness in credit relationships. It levels the playing field between small lenders and large borrowers, ensuring that risks are equitably managed and that parties are held accountable to

their legal obligations. Legal certainty is further reinforced through standardized insurance policies, regulatory supervision by the Financial Services Authority (OJK), and contractual enforcement through the courts. The presence of credit insurance also aligns with constitutional guarantees under the Indonesian legal framework, particularly in promoting economic security, consumer protection, and access to justice.

Function of Law in the Context of Financial Stability

Referencing Lawrence M. Friedman, one of the most influential socio-legal scholars, articulates the functioning of a legal system through a tripartite framework: legal structure, legal substance, and legal culture. These three dimensions institutions, rules, and behavioral patterns determine the effectiveness of law in guiding societal behavior and maintaining systemic order. When applied to the domain of financial regulation, particularly credit insurance, this framework provides a comprehensive lens to assess the role of law in promoting financial stability, the function of law in society operates through three elements:

- a) Legal structure: regulatory bodies such as OJK and insurance supervisory agencies. The legal structure encompasses the institutional framework responsible for enforcing laws and regulations. In Indonesia, regulatory authorities such as the Financial Services Authority (Otoritas Jasa Keuangan or OJK), Bank Indonesia, and insurance supervisory agencies are central to maintaining the integrity of the financial system. In the credit insurance sector, OJK is mandated to supervise both the insurance industry and financial service providers. It is responsible for issuing licenses, approving insurance products, and ensuring market conduct standards. However, institutional challenges remain. Regulatory fragmentation, weak coordination among enforcement bodies, and resource constraints limit the capacity of regulators to detect and respond to systemic risks in a timely manner. As a result, the institutional enforcement of credit insurance provisions is often reactive rather than preventive, undermining its role as a stabilizing mechanism. Strengthening the legal structure requires capacity building, inter-agency cooperation, and the establishment of specialized supervisory units capable of tracking evolving financial products and complex credit derivatives.
- b) Legal substance: laws and regulations governing insurance and financial institutions. The legal substance refers to the body of laws, rules, and regulations that govern conduct. In the context of credit insurance, relevant legal instruments include the Indonesian Civil Code, Law No. 40 of 2014 on Insurance, OJK Regulations, and sectoral guidelines on insurance underwriting and claim settlement. These legal provisions aim to ensure transparency, prudential management, and risk allocation among credit institutions, insurers, and policyholders. For instance, laws require that insurance policies clearly define the terms of coverage, procedures for claims, and dispute resolution mechanisms. Despite this, gaps persist in the normative quality and enforceability of insurance laws. Ambiguities in the scope of coverage, insufficient guidance on handling non-performing loans (NPLs), and a lack of standardized claim timelines have created legal uncertainty. Moreover, regulations have not kept pace with the growing complexity of financial products, especially in fintech-driven credit ecosystems. An effective legal substance demands not only comprehensive legislation but also regular legal reform to adapt to market developments and stakeholder needs.
- c) Legal culture: the behavior and compliance levels of market actors. The legal culture component concerns the attitudes, beliefs, and compliance behaviors of market actors insurance companies, banks, underwriters, and borrowers. In Indonesia, this remains one of the most underdeveloped aspects of Friedman's model in the financial sector. Credit insurance uptake remains low, partly due to limited public understanding of its function and benefits. Many financial institutions treat it as a formality rather than a genuine risk management tool. On the supply side, some insurers adopt opaque underwriting practices or delay claim settlements, undermining trust in the system. This weak legal culture contributes to regulatory arbitrage, non-compliance, and poor

enforcement. In the absence of a compliance-oriented market ethos, even the most sophisticated legal framework will fail to produce desired outcomes. To foster a robust legal culture, Indonesia must invest in legal literacy programs, stakeholder training, and incentives for compliance. Ethical business practices must be embedded within corporate governance structures, and sanctions for non-compliance must be consistently applied.

In Indonesia, these three components are still developing in terms of synergy. Inadequate enforcement, lack of transparency in underwriting, and limited public awareness have hindered credit insurance from functioning optimally.

Regulatory Framework in Indonesia

The primary legal foundation governing the operations of the insurance industry in Indonesia is Law No. 40 of 2014 on Insurance, which provides a general legal framework for insurance activities. This is reinforced by OJK Regulation No. 69/POJK.05/2016 on the Conduct of Insurance Business, which outlines essential principles such as underwriting processes, risk management, and reporting requirements. In addition, circulars issued by the Financial Services Authority (OJK) offer more specific technical guidance, particularly concerning credit insurance products, which are widely utilized in the banking and financing sectors. Despite this relatively comprehensive regulatory framework, several regulatory gaps remain. One notable gap is the absence of a specific regulation addressing the scope and structure of credit insurance, especially in relation to the banking sector.

Furthermore, there is currently no integrated database system that enables comprehensive risk monitoring across financial institutions, thereby limiting systemic risk analysis. Moreover, the procedures for dispute resolution between insurance companies and financial institutions are not yet clearly defined or regulated. This lack of clarity may result in legal uncertainty and hinder effective protection for both consumers and financial service providers. Therefore, regulatory reform and the strengthening of supporting infrastructure are urgently needed to build a more accountable, transparent, and responsive insurance system that aligns with the evolving dynamics of the financial sector.

Comparative Legal Practices

In Germany and South Korea, credit insurance is strongly regulated and often supported by public guarantee agencies. These systems provide:

- a) Greater coverage and underwriting standards,
- b) Legal certainty in claim settlement,
- c) Clearer institutional responsibility, particularly in export and SME financing.

Indonesia may benefit from adopting elements of such models to improve both legal protection and economic functionality.

Conclusions

Credit insurance constitutes a vital legal mechanism that plays a dual role in supporting the financial system: it functions as a private risk transfer tool for financial institutions and as a public policy instrument that can enhance systemic stability. In the context of Indonesia, credit insurance has the potential to strengthen the resilience of the banking sector by mitigating credit risk and improving confidence in loan disbursement activities. Nevertheless, the current regulatory and institutional frameworks remain inadequate to support its effective implementation. The absence of comprehensive and specific legal provisions governing the structure, scope, and enforcement of credit insurance contracts results in legal uncertainty, both for insurers and insured parties.

Moreover, the enforcement mechanisms are weak, and supervisory oversight by relevant authorities, such as the Financial Services Authority (OJK), is limited in scope and depth. These regulatory gaps significantly reduce the protective and preventive functions that credit insurance

is intended to fulfill. As such, legal reform and institutional strengthening are urgently needed to ensure that credit insurance can operate as a reliable financial safeguard within the broader framework of Indonesia's economic and legal system.

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