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Journal of Advanced Research in Law and Economics is designed to provide an outlet for theoretical and empirical research on the interface between economics and law. The Journal explores the various understandings that economic approaches shed on legal institutions.

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Journal of Advanced Research in Law and Economics is currently indexed in SCOPUS, EconLit, RePec, CEEOL, EBSCO, ProQuest, and Cabell’s Directory.

Invited manuscripts will be due till 15th of January, 2018, and shall go through the usual, albeit somewhat expedited, refereeing process.

Deadline for submission of proposals: 15th of January, 2018
Expected Publication Date: March 2018
Web: http://journals.arserspublishing.eu
E–mail: jarle@asperspublishing.eu

Full author’s guidelines are available from: http://journals.asperspublishing.eu/jarle/about
The Characteristics of Non-Litigation Resolution for Life Insurance Lawsuit in Indonesia

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Suggested Citation:

Article's History:
Received September, 2017; Revised October, 2017; Published December, 2017.
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Abstract:
This study analyzed the characteristics of non-litigation resolution for life insurance lawsuit in Indonesia. The result found that the non-litigation solution for life insurance lawsuit in Indonesia must be through Department of Mediation and Arbitration of Insurance (in Indonesia, known as BMAI). When the mediation -as the legal action from a customer- was objected, the lawsuit would proceed to the adjudication. When the customer won on this adjudication level, the insurance company was then obligated to do some payment as mentioned on the insurance policy. Furthermore, when the legal action of a customer was objected, the customer was then free to do an arbitrage legal action. The arbitration was final and had fixed legal power. Thus, any appeal, cassation, or judicial review could not be held. The solution for life insurance lawsuit through BMAI has several characteristics such as quick in procedures, dynamic, innovative, cheap, and low budget. In addition, the dispute solution through BMAI is confidential, quick in time, and supported by some experts on related types of lawsuit, thus, it may result in fair judgment.

Keywords: life Insurance; non-Litigation; characteristic; lawsuit; solution; customer.

JEL Classification: K11; K22; K23; D81; G22.

Introduction
Generally, the future of every human being is unsure, as no one can see any possibility in their lives. However, as God’s creature, every human is attributed with logical mind and the five senses as means to seek for solution for their lives. Using the past experience as guidance, they presume events which may happen and how to handle those events to prevent any possible risks (Huda 2007, 53).

Risk is ‘a condition in which there is a possibility of an adverse deviation from a desired outcome that is expected or hoped for’ (Vaughan and Therese 2003, 3). One way to manage a risk is through insurance (Huda et al. 2016, 1037). Insurance enables the whole society to minimize the risks caused by some natural factors for instance earthquakes, hurricanes, tornados, flood; some human actions for example theft, fraud, pollution, terrorism, and some economic impacts such as inflation, obsolescence, depressions/recessions (Aqil 2014, 205).
Insurance is also defined as a financial means in relative governance to encounter any risks of individual life such as health, accident, pension time, and mortality (Greene 1988, 219). Insurance may cover any risks of uncertain life (Purba 1992, 275). Various risks of life make people have a high mental attitude to insure their life.

The increasing customers of insurance may impact on the dispute of life insurance. Department of Mediation and Arbitration of Insurance (BMAI) noted that the claim of life insurance increased significantly in 2012; reaching up to 138 cases or 158% of the total cases in 2011 that were 48 cases. In 2013, the total claims were 41 cases consisting of 27 cases of life insurance and 14 cases of other general insurance (Huda 2016, 6).

In order to provide legal certainty in solving the claim of life insurance, the government established a Regulation of Financial Services Authority (in Indonesia known as OJK Regulation) No. 1/POJK.7/2014, particularly to Article 2 subsection (1), that ‘it is a must for Financial Services Authority (life insurance company) to solve any claim that occurs.’ However, Article 2 subsection (2) mentions that ‘when it does not meet any solution for lawsuit, the insured and the Financial Services Authority (insurance company) may solve the case through either litigation or non-litigation path.’ And, this study would analyze the characteristics of non-litigation solution for life insurance lawsuit in Indonesia.

1. Solution for Life Insurance Lawsuit through Department of Mediation and Arbitration of Insurance (BMAI)

The mechanism of solution for life insurance lawsuit is through BMAI (internal dispute resolution) and judicial department (external dispute resolution). Resolutions through BMAI has several characteristics such as quick in procedure, dynamic, innovative, low budget, objective, relevant, and fair. Furthermore, the dispute solution through BMAI is confidential, thus, each of the disputing parties may feel more convenient to run the process. In addition, the process is fast as it is designed to avoid any procedural and administrative delays, and supported by experts with particular competence on related case, thus, it may reveal an objective and relevant result.

BMAI provides services in the form of fair solution for claims of life insurance through alternative resolutions and services for the insured in order to increase public trust and interest on insurance for the sake of prosperous and convenient life. Its goals are professionally independent and impartial, including helping people solve the claims of life insurance between an insurance company and an insured through alternative resolutions, providing information and understanding about insurance and management of risk to public, and giving suggestions about particular claims handled to government and insurance businessmen.

BMAI is an accessible department for public and insurance companies. The process of mediation, adjudication, and arbitration will help people find solutions for disputed claims, and provide a comprehensive solution for the insured who have less understanding about the notion of insurance and less capability to solve a lawsuit judicially, or even to pay a very high-cost legal aid.

To request for claim on life insurance, it is a must for the insured to fill a request form of dispute resolution (in Indonesia, known as FPPS) provided by BMAI and file the form to BMAI as the base to conduct an investigation on a dispute. The solution of life insurance lawsuit through BMAI has boundaries on its portion of claims. For the process of mediation and adjudication, the portion of claims for compensation or the advantage of the disputed policy is no more than Rp 500,000,000.00 (five hundred million rupiah) for each claim of life insurance. Some stages on dispute solution of life insurance are described as follows.

(a) Mediation

Mediation is a process of negotiating solutions for a dispute in which there is an externally neutral party helping to reach a deal for a satisfying negotiation (Bandle 2011, 30). On the process of mediation, the client proposes a request of solution for a life insurance claim to BMAI. The mediator will try to deal with the problem and seek for a fair solution. The mediator will act as the bridge between the insured and the insurance company.

The mediator has authority to ask the disputing parties, and the parties are obligated to provide information and materials related to the dispute, such as:

1. Copy of the policy along with the clause and endorsement, the request of insurance, and any other related and accepted correspondences up to the establishment of the insurance policy;
2. Form of the claim and other related reports (e.g., police, loss adjuster, doctor, etc.);
3. Evidences related to the portion of proposed claim;
4. Evidences related to the reason of claim objection;
5. Copy of any related correspondences, including the notes or meeting records, between the disputing parties for the claim settlement process;
6. Information from the third party (the insurance agent or the insurance broker) who facilitates the establishment/the settlement of the insurance.
The mediator will have an interview, when it is necessary, whether through phone call or direct meeting. If the client is out of Jakarta, Bogor, Depok, Tangerang and Bekasi, the mediator may organize mediation by using communication tools such as telephone, fax, email, or by visiting the client. Analyzing the request of claim will reveal an initial conclusion which may lead to a dispute resolution, whether closing the settlement process or continuing the process into investigation.

If the initial conclusion from the mediator is not in line with the claim objection, the mediator will immediately contact the insurance company to discuss the claim and expect to reach a fair solution for both parties.

If the client cannot fully accept the reason of the objection but the compensation, the mediator will approach the insurance company. Furthermore, if the insurance company agrees with the solution, the dispute is over, however, if it does not reach the agreement from the company, the dispute will proceed to the adjudication.

(b) Adjudication

A dispute filed to the adjudication is one that has run mediation but does not reach any solution yet. BMAI Adjudication will bring solutions in the form of final and conclusive judgments. The basis of establishing such judgment will be recorded and signed by all panel members. The judgment will be announced in final proceeding. As the result, if all the parties agree with the judgment, they will sign it as the agreement of the claim.

If the adjudicator panel judges the claim for the client's benefit, it may include some payment to be paid for financial compensation, and exclude any compensation outside the insurance policy. The adjudicator panel may act as the part of judgment, providing a necessary recommendation to the insurance company, although it does not bind the client.

If the clients objects the BMAI's adjudicatory judgment, they will be free to do further legal actions, as set in the policy, to get their rights. Conversely, if the adjudicatory judgment requires the insurance company to do some payment, the company has to conduct some payment as set in the insurance policy.

BMAI's judgment on life insurance dispute is final and binding for the insurance company. This indicates that if an insurance company is defeated on the adjudicatory proceeding, the company must pay the proposed claim. In this case, the company must obey the judgment and have no right to do any legal action. Thus, it is clear that BMAI is an independent department, and it is difficult to define BMAI as means for insurance companies to control their customers. If the process of adjudication cannot solve the claim or the client objects the adjudicatory result, the client may seek for other resolution (e.g., arbitration or through court proceeding). However, all adjudicatory results from BMAI cannot be used as evidence in judicial proceeding.

(c) Arbitration

The definition of arbitration is set under the article 1 subsection (1), Law No. 30/ 1999 about Arbitration and Alternative Solution for dispute. It mentions that the dispute resolution for civil cases out of public court is based on an agreement of arbitration made by the disputing parties. Arbitration is usually defined as a process where a neutral third party delivers a decision which is final, and binding on both parties (Petrauskas 2011: 928). In regard to life insurance, it is under the provision of SK 001/SK-BMAI/09.2014 on Regulation of Arbitration Procedure by Department of Mediation for Insurance in Indonesia. Furthermore, arbitration is defined as a dispute solution for civil cases held by BMAI out of the public court under its regulation and procedures based on the agreement of arbitration.

The scope of the resolution for insurance dispute through arbitration in BMAI must be clearly asserted in the agreement of arbitration, that every dispute that emerges or likely to emerge in that legal relationship must be solved based on a good faith with cooperative and non-confronting way by putting aside any dispute resolutions through court or other alternative departments (Agrawal 2014, 67). A request for arbitration is filed by attaching adequate copies of warrant for the proceeding. The arbitration must contain:

1. The complete name and address or domiciles of the parties;
2. Brief description about the dispute;
3. Clear content; in addition to attaching several enclosures such as: copy of evidence, copy of arbitration agreement, and copy of registration payment.

Investigating the dispute through arbitration is conducted in writing, while the verbal investigation is conducted in private between the disputing parties along with their attorneys. Both parties have equal rights and obligations to express their arguments, present evidence and witnesses. The applied law for dispute resolution in Indonesia is the recent arbitration law. The time allowance for investigation is 180 (one hundred and eighteen) days since the date of establishing a single and/or committee arbitrator.

An arbitrator has an authority to make decision based on justice and appropriateness, and thus, the legal regulation can be put aside. In particular case, the law may force (dwigende regels) to be applied by the arbitrator.
The decision of an arbitrator is final with fixed legal power and considered binding to both parties. Hence, any appeal, cassation, or judicial review cannot be found.

2. Challenges for Quick, Cheap, Fair, and Efficient Settlement of Life Insurance

The principles of protecting customers of insurance involve transparency, fair treatment, reliability, confidentiality, and security of customer’s data/information, and a simple, cheap, and low-budget dispute resolution. Article 32 subsection (1) POJK No. 1/POJK.07/2013 sets that it is a must for businessmen of financial services (the insurer) to have and do the mechanism of services, and solve customers’ complaints. Complaint refers to an expression of dissatisfaction by a customer (the insured) due to financial disadvantages that happen because of his/her fault or the dereliction of a financial service company (the insurer) in allocating and utilizing the services and/or products of the financial service company (Herierri 2015, 45).

The regulation of Financial Services Authority No. 1/POJK.07/2014 mentions a series of consumer protections including education, services of information, complaints and settlements. When consumers often disagree with the settlements of their insurance companies, the dispute will be filed to BMAI. Some principles of dispute resolution through BMAI are as follow.

(a) Accessibility
- This principle indicates that BMAI is easy to access by customers. Thus, the customer may use it to solve their problem. To easily access it for settlement, BMAI develops a strategy of communication to improve consumers’ access on service department of alternative dispute resolution and to improve their understanding about the process of dispute resolution by BMAI. With these accessible lines of services for consumers’ dispute resolution; it is likely to reach the entire area of Indonesia, from Sabang to Merauke;

(b) Independency
- BMAI has staff making sure that the settlement has met the requirements to do its function. In order to support its independency, BMAI is not allowed to give any right of veto toward its members. BMAI consults with some relevant stakeholders to establish and alter its regulation before it is applied. In order to keep its independency, BMAI is supported by adequate sources to do its function and not depend on other financial service departments;

(c) Fairness
- Fairness, in this case, indicates that this department has regulations for making decisions, and it must provide a written reason for its objection on a request of dispute resolution filed by consumers and/or financial service companies under several conditions, including: (1) the mediator truly acts as a facilitator that bridges the interests of both disputing parties in order to find solution; (2) the adjudicator and the arbitrator are not allowed to make decision based on information that the disputing parties do not know about it; and (3) the adjudicator and the arbitrator must develop a written reason for each of their decisions;

(d) Efficiency and Effectiveness
- BMAI has to solve a dispute in efficient manner, with particular period of time allowed for resolution and low cost for consumers’ budget. In addition, effectiveness indicates that BMAI has rules which contain a condition asserting that its members must obey and apply the rules in each of their judgments and they must also control the implementation of the judgment.

In order to improve the service quality of BMAI, Financial Services Authority in Article 9 POJK No. 1/ 2014 requires BMAI to make six-monthly report on June and December, with the due date is on 10 of the next month. BMAI report must contain particular information as follows.

(a) The amount of settlement;
(b) Demography of the consumer filing a request of settlement;
(c) The amount of settlement objected due to ineligibility (including the reason behind the objection);
(d) The dispute which is still on-process of settlement;
(e) The period of time needed for settlement;
(f) Type of service and/or product disputed; and
(g) The number of disputes judged and the result of monitoring on the execution of the intended judgment.

To see the effectiveness of BMAI as a mediator in a dispute resolution of life insurance lawsuit, some advantages should be described (Sari 2007, 107-108) as follow:

(a) Having dispute resolution through BMAI is free of charge;
(b) BMAI is independent, it is not allowed to force any party;
(c) Time spent for dispute resolution is relatively quick rather than the litigation process due to its simple procedures;
(d) It keeps a relationship safe since the judgment is confidential;
(e) Although the base office is in Jakarta, every insured from any regions is still capable to file their complaints via phone call, letter, fax, or e-mail; and
(f) If both parties are dissatisfied with the result of mediation, the dispute can be filed to the litigation area (for further legal action).

Nevertheless, some disadvantages of BMAI are as follow.
(a) BMAI only solves disputes which relate to the members of BMAI. This may disadvantage consumers having disputes with an insurance company that is not a member of BMAI. Recently, BMAI has 88 insurance companies as its members. among those number, 41 of them are life insurance companies, 4 of them are social insurance companies, and 4 others are re-insurance companies;
(b) An insurance company engaged to the judgment is charged to do some payment for operational cost. This operational payment implies that the insurance company has a sense of belonging to BMAI and feels that this department is on its side. As the result, it will lead the independency of BMAI into question.

Conclusions
A dispute resolution of life insurance lawsuit can be done through two ways, litigation and non-litigation. In particular to non-litigation way, Financial Services Authority has built an alternative department for dispute resolution in financial services sector, especially to insurances mentioned by BMAI, a department of mediation and arbitration in Indonesia.

Dispute resolution through BMAI can be done in two stages, mediation and adjudication. The process of dispute resolution in BMAI involves: Mediation, starting from filing a complaint to BMAI and the case manage will immediately handle it. Case Manager will take serious effort to find a fair and good solution for the disputing parties; the consumer and the insurance company. If the dispute cannot be solved through mediation, it will be filed to the adjudication level. The adjudicator panel designated by BMAI will make the judgment. In this stage, if an insurance company is found guilty, the dispute will be over and the company must pay the claim. Conversely, if the customer is found guilty, it will lead to the court or arbitration level.

Resolution reflecting quick, cheap, fair, and efficient manner has been set under POJK No. 1/POJK.7/2014. Quick manner implies that the resolution is settled in short time through mediation, while it needs 60 days through adjudication. Cheap or low budget implies that the cost for a dispute resolution is affordable for the customers. Fair manner indicates that the mediator or adjudicator must be fair in treating both consumers and insurance companies, and the judgment must be based on a logical reason. Finally, efficient manner implies that it has non-tortuous procedures and provides a legal certainty for both parties.

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