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The Role of Alternative Dispute Resolution Institutions in the Financial Services Sector in Resolving Insurance Disputes

Tia Arista¹, Novea Elysa Wardhani², Evi³.

¹Faculty of Law, Palangka Raya University, Indonesia, tiafajrin3@gmail.com.

²Faculty of Law, Palangka Raya University, Indonesia, noveaelysawardhani@gmail.com.

³Faculty of Law, Palangka Raya University, Indonesia, evionly@gmail.com.

Corresponding Author: tiafajrin3@gmail.com¹

Abstract: The Alternative Dispute Resolution Institution in the Financial Services Sector (LAPS-SJK) is an institution that facilitates dispute resolution through non-litigation channels with the principles of justice and efficiency. The purpose of this study is to determine how to resolve insurance disputes through Mediation and Arbitration services at LAPS-SJK such as the Regulations and Procedural Process briefly. This study uses a normative legal research method with qualitative data analysis techniques, then the results of the study are presented in a scientific paper that describes the role and mechanism of LAPS-SJK in resolving insurance disputes. The research results show that although LAPS-SJK aims to provide affordable fees, until now there has been no transparency regarding the fee structure charged for various types of disputes which can be an obstacle for less fortunate parties. This study also shows that dispute resolution through Mediation and Arbitration can be an effective solution to reduce insurance disputes in Indonesia. It is important to increase socialization regarding this mechanism so that more parties use the existing alternative dispute resolution.

Keyword: Insurance, Alternative Dispute Resolution Institution in the Financial Services Sector (LAPS-SJK), Mediation, Arbitration.

INTRODUCTION

Insurance is an agreement between two parties, namely the insurer and the insured, where the insurer provides financial guarantees for losses suffered by the insured due to certain events. In this case, the insured pays a premium in return for the protection. Insurance serves to reduce the risk of loss and provide financial certainty to the insured. In the world of insurance, disputes often occur between the insured and the insurance company. These disputes are generally related to rejected claims, differences in interpretation of the policy, or dissatisfaction with the value of compensation offered.

Alternative dispute resolution (ADR) is a responsive expression of dissatisfaction with dispute resolution through confrontational and long-winded litigation processes. The existence and function of ADR also appears in the conceptual understanding that applies a dispute resolution mechanism by prioritizing creative compromise efforts and is placed as the first

resort while the court is used as the last resort. In the perspective of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, ADR is an out-of-court dispute resolution institution based on the agreement of the parties by overriding litigation dispute resolution in court.

The Financial Services Authority (OJK) issued Financial Services Authority Regulation (POJK) Number 61/POJK.07/2020 which was just promulgated at the Ministry of Law and Human Rights on December 16, 2020. The regulation regulates the Financial Services Sector Alternative Dispute Resolution Institution (LAPS-SJK), amending the old regulation POJK Number 1/POJK.07/2014 which regulates the Financial Services Sector Alternative Dispute Resolution Institution.

The Financial Services Sector Alternative Dispute Resolution Institution (LAPS-SJK) is an institution that facilitates dispute resolution through out-of-court (non-litigation) channels with the principles of fairness and efficiency. Out-of-court dispute resolution is a dispute resolution carried out based on the agreement of the parties and the procedure for resolving a dispute is left entirely to the parties to the dispute. LAPS-SJK serves as a dispute resolution center for the various financial services industries, including banking and insurance, and offers settlement methods such as Mediation and Arbitration. LAPS-SJK was established by Financial Services Business Actors (PUJK) coordinated by financial services sector associations and/or Self Regulatory Organizations (SROs) on 22 September 2020.

The objective contains the question of the article that should be explained in the discussion and answered in the conclusion.

METHOD

The research in writing this article uses normative juridical research methods, namely legal research conducted by examining secondary data in the form of primary, secondary and tertiary legal materials. In this research a statute approach is used which will trace the applicable regulations in the role of the LAPS-SJK to resolve insurance disputes by examining the OJK Law, POJK Number 1 / POJK.07 / 2013, POJK Number 61 / POJK.07 / 2020, and several other regulations related to research issues. The method of collecting data is done by literature study which can be in the form of laws and regulations, documents, books, journals, and literature related to the problem under study to collect secondary data to obtain the theoretical basis and data needed to analyze research problems. The analysis technique in this research uses qualitative data analysis techniques which then the results of the research will be presented in a scientific work that briefly describes the role and mechanism of the LAPS-SJK in resolving insurance disputes.

RESULTS AND DISCUSSION

According to Article 2 letter b of POJK Number 61/POJK.07/2020, LAPS-SJK was established with the aim that out-of-court dispute resolution services can be trusted by consumers and financial services business actors (Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, 2020).

The establishment of this institution went through a long process, namely in the Focus Group Discussion (FGD) formed by OJK from 2018 to 2019 with the initial idea of forming a single and integrated LAPS. Until September 22, 2020 there was an agreement to form LAPS-SJK by Self Regulatory Organizations (SROs) and associations within the financial services sector (lapssjk.id).

Then the Financial Services Authority as an institution authorized by law to regulate, supervise and conduct investigations of financial services institutions regulates this institution through POJK Number 61 / POJK.07 / 2020 which was promulgated on December 16, 2020. From an institutional perspective, LAPS-SJK is not part of the OJK, but as a consumer

protection ecosystem built by the OJK (hukumonline.com, 2022). In carrying out its duties, LAPS-SJK receives an operational license and is directly supervised by the OJK. The legal entity of LAPS-SJK is an association registered with the Ministry of Law and Human Rights. Dispute resolution through LAPS-SJK is carried out independently, fairly, effectively, efficiently and easily accessible to the parties to the dispute.

One of the problems that often occurs to date in the world of insurance in Indonesia is insurance disputes such as claim rejection, inappropriate claim nominal and others. Therefore, the Alternative Dispute Resolution Institutions included in the List of Alternative Dispute Resolution Institutions established by OJK include Alternative Dispute Resolution Institutions that have dispute resolution services in the form of Mediation, Adjudicative Arbitration, and Arbitration.

Insurance disputes are one type of conflict that arises between the insured party (customer) and the insurer (insurance company) related to insurance claims. This dispute can cover various aspects, ranging from claim rejection to problems in payment of compensation.

There are two classifications of Mediation, namely in-court (litigation) and out-of-court (non-litigation), out-of-court Mediation is handled by private mediators, individuals, as well as an independent alternative settlement institution known as the National Mediation Center (PMN).

Settlement of Insurance Disputes Through Mediation

Mediation is one of the dispute resolution services through LAPS-SJK that can be chosen by the disputing parties to facilitate the insurance dispute resolution process. According to the Big Indonesian Dictionary (KBBI), Mediation is the process of involving a third party in resolving a dispute, while Mediator is defined as an intermediary or liaison. The Collins English Dictionary and Thesaurus states that Mediation is the activity of bridging between two disputing parties in order to produce an agreement.

Dispute resolution through Mediation is regulated in the Financial Services Sector Alternative Dispute Resolution Institution Regulation No. Per-01/LAPS-SJK/I/2021 concerning Mediation Rules and Procedures. Insurance disputes arising from agreements or financial transactions between customers and insurance companies may be submitted for settlement through Mediation at LAPS-SJK with the following provisions:

- a) The insurance dispute has been subject to internal dispute resolution. According to Ian Ramsay and Miranda Webster, internal dispute resolution is an important part and the first step to resolving financial system disputes, it refers to the way to resolve and handle consumer complaints (Ian Ramsay et al, 2019).
- b) There is a Mediation Agreement between the customer and the insurance company. Either made before or after the dispute arises provided that: a) Dispute settlement through Mediation is contained in the dispute settlement clause in the insurance policy signed by the parties; b) The agreement is made in the form of a correspondence agreement, or; c) Formed in the form of an agreement through an electronic system in accordance with applicable regulations.

The mediator is tasked with only assisting the disputing parties in resolving their problems and does not have the authority to make decisions or only act as a facilitator to assist and find solutions to the disputing parties (Siti Nurbaiti, 2008). Mediation is confidential and takes place in private. However, information about the Mediation may be disclosed to other parties in the event that there is an agreement of the parties, it is necessary for the implementation of the Deed of Peace, there is an order from an authorized institution, the need to monitor the results of the Mediation or research purposes by protecting the identity of the parties and the mediator.

Mediation Proceedings at LAPS-SJK in Resolving Insurance Disputes Between Customers and Insurance Companies

Pursuant to Article 13 paragraph (1) of the Financial Services Sector Alternative Dispute Resolution Institution Regulation No. 01 concerning Mediation Rules and Procedures, the Mediation period lasts for a maximum of 30 days from the date the Mediator receives the appointment, and can be extended by agreement of the parties and the mediator but not longer than the initial period. Mediation may be conducted at the LAPS-SJK office or elsewhere as agreed by the parties and approved by the mediator and the board.

The language used during mediation is Bahasa Indonesia or another language as agreed by the parties and approved by the mediator and the board. At the beginning of the negotiation process, the customer and the insurance company must receive a summons delivered by the Secretary, on behalf of the Mediator, no later than 7 days after the appointment of the Mediator. The Mediator plays an active role in encouraging the involvement of the Mediation parties such as, determining the rules of procedure that have not been regulated in the Mediation Rules of Procedure, discussing the schedule and agenda of the meeting, tracing and reviewing the interests of the customer and insurance company, and seeking win-win solutions for the parties to the dispute.

The success of dispute resolution through Mediation is influenced by the good faith factor of both parties. Dispute resolution through Mediation is also influenced by the Mediator's expertise in negotiating. There are two possible outcomes of dispute resolution efforts through Mediation carried out by customers and insurance companies are as follows:

1. Mediation achieves peace

The Peace Agreement made by the parties in mediation must be made consciously and voluntarily as outlined in a peace agreement document signed by the parties with the mediator as a witness. In the peace agreement there must be a clause stating that the dispute in the Mediation Request has been resolved. If the peace agreement is signed by a proxy, then the party granting the power of attorney is obliged at the first opportunity to make a written statement regarding his/her approval of the signed peace agreement. If a dispute has more than one claim, or involves more than two parties, the parties may conclude a Peace Agreement on some of the claims or only between some of the parties. The Peace Agreement signed by the parties must be implemented within the period agreed upon in the document. In monitoring the implementation of the peace agreement, the parties may submit information to the management and OJK. The Peace Agreement can be made into a Deed of Peace by containing an agreement clause on dispute resolution through Mediation. This peace agreement is final so that no rebuttal or resistance can be made.

2. Mediation did not achieve peace

Mediation can end without peace between the two parties to the dispute if after the expiration of the Mediation period, the dispute resolved through Mediation relates to assets or property that are obviously related to a third party that would not be able to resolve the dispute without involving a third party, the absence of one of the parties in the Mediation or the resignation of one of the parties, and there is no good faith from one of the parties. Mediation that ends without peace is submitted in writing by the Mediator to the parties with a copy addressed to the management. If the dispute is proceeded by the parties to Arbitration, then everything obtained during the Mediation is considered non-existent and cannot be used as evidence.

Peace Deed from Mediation Outside Arbitration

If the parties want the Peace Agreement to be set forth in a Deed of Settlement, then the Peace Agreement must contain the clause, and then the parties can submit a Request for Arbitration to the Administrator so that a Deed of Settlement is made based on special procedures. The regulation does not regulate the registration of the Deed of Peace with the

District Court, the parties only need to make a Deed of Peace through the Arbitration Session. The Deed of Settlement made is binding and equal to an inconclusive judge's decision so that no appeal or cassation can be made.

The Deed of Settlement is executorial so that it can be directly executed by the customer and the insurance company. The Arbitration procedure of the Mediation Deed of Settlement is simpler than the Arbitration procedure as set out in LAPS-SJK Regulation No. 2 on Arbitration Rules and Procedures (lapssjk.id).

Insurance Dispute Resolution Through Arbitration

Arbitration is also an alternative dispute resolution service available at LAPS-SJK. According to Frank Elkoury and Edna Elkoury, Arbitration is a simple process chosen by the parties voluntarily because they want their case to be decided by a neutral arbitrator of their choice where their decision is based on the arguments in the case. The parties agree from the beginning to accept the decision as final and binding. Insurance agreement as an engagement that contains promises and agreements between the parties to give rise to rights and obligations. In the agreement there is a dispute resolution clause through Arbitration. If a dispute occurs, it must first be resolved through Internal Dispute Resolution. Arbitration conducted at LAPS-SJK is based on good faith, dignity, non-confrontational, cooperative and overrides dispute resolution through litigation.

The Arbitration Agreement can be made in 2 forms. First, Pactum Decompromittendo, which is an Arbitration Agreement made before the commencement of signing in the form of an Arbitration Clause contained in the agreement. Second, Deed of Compromise, which is an Arbitration Agreement made after the commencement of the agreement in the form of a separate agreement.

The Arbitration Agreement must state its appointment of the LAPS-SJK Arbitration forum, then the party given the right to choose must make a statement letter confirming to LAPS-SJK that the forum chosen is LAPS-SJK Arbitration. The agreement between the customer and the insurance company contains the selection of a dispute resolution forum through LAPS that existed before the enactment of OJK Regulation Number 61 / POJK.07 / 20 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, it will automatically switch to LAPS-SJK. The Arbitration Agreement made by the customer and the insurance company means that the parties have agreed to eliminate the case process through the District Court, and are ready to implement the decision made by the Sole Arbitrator or the Panel of Arbitrators.

The appointment of the Sole Arbitrator or the Arbitral Tribunal shall be within a maximum period of 10 days calculated after the parties receive confirmation of the registration of the Request for Arbitration, if the Sole Arbitrator or the Arbitral Tribunal has not been appointed after that period, the administrator may extend the period by a maximum of 5 days. The period of the Arbitration Hearing is 180 days commencing from the date of appointment of the Sole Arbitrator or the Arbitral Tribunal until the reading of the Arbitral Award. The Sole Arbitrator or the Arbitral Tribunal may extend the period if one of the parties submits a request regarding a special matter, an interim award is made, there is an attempt to reconcile, there is a change of Arbitrator, and if deemed necessary by the Sole Arbitrator or the Arbitral Tribunal for the benefit of the examination.

In resolving disputes through Arbitration, customers and insurance companies have the right to determine which law applies to resolve the dispute, if the parties do not determine, the law applied is the law where the Arbitration is held.

Not much different from LAPS-SJK, the Indonesian National Arbitration Board or commonly referred to as BANI is a body established by the government to resolve disputes that occur in various sectors, through arbitration and other forms of alternative dispute resolution. BANI acts autonomously and independently in upholding law and justice. Peaceful dispute

resolution through arbitration at BANI is based on the good faith of the parties based on cooperative and non-confrontational procedures.

BANI itself was established in 1977 by the Indonesian Chamber of Commerce and Industry (KADIN) through Decree No.SKEP/152/DPH/1977 dated November 30, 1977 and is managed by a Board of Management and supervised by a Board of Supervisors and an Advisory Board consisting of community leaders and the business sector. BANI is one of the founders and members of the Asia Pacific Regional Arbitration Group (APRAG). BANI is also one of the founders of the Regional Arbitrators Institutes Forum (RAIF). In addition, BANI is a member of the International Council for Commercial Arbitration (ICCA) (baniarbitration.org.)

Arbitration Proceedings at LAPS-SJK in Resolving Insurance Disputes Between Customers and Insurance Companies

Within 14 days after receiving the file of the Request for Arbitration from the management, the Sole Arbitrator or the Arbitration Council through the secretary shall deliver the summons for the first hearing to the parties. The first hearing shall be held at least 14 days after the date of delivery of the summons.

At the first hearing, if the properly summoned claimant fails to appear without a valid reason, the Sole Arbitrator or the Arbitration Council shall declare the Petition for Arbitration void. However, in the event that the respondent does not attend the hearing without a valid reason, the Sole Arbitrator or the Arbitral Tribunal may postpone the hearing and re-call the respondent and the hearing must be conducted within 10 days of the postponement of the hearing.

If the respondent still does not appear without a valid reason while the respondent has been properly summoned, the hearing will continue. The absence of the respondent at the hearing is deemed to have waived the right to file an answer. If there is a legal basis and it is reasonable, the Sole Arbitrator or the Arbitration Tribunal may grant the request for Arbitration.

In the Arbitration process at LAPS-SJK the parties have the right to postulate an event and can refute the arguments of the other party accompanied by evidence on the events presented. Evidence that can be used includes written evidence / electronic written evidence, witnesses, testimony, confessions and oaths. The parties get an equal and fair opportunity to submit evidence. In the Arbitration hearing, the Sole Arbitrator or the Arbitral Tribunal may present a witness or expert on its own initiative or at the request of either party. If no more evidence is presented and if the Sole Arbitrator or the Arbitral Tribunal feels that the Arbitration Hearing is sufficient, the parties are given the opportunity to submit conclusions at a time determined by the Sole Arbitrator or the Arbitral Tribunal.

Arbitration Award

Arbitration decisions are made based on the provisions of law or justice and propriety. The Deed of Settlement will be made by the Sole Arbitrator or the Arbitration Council if the Settlement Agreement meets the conditions such as being in accordance with the will of the parties, not contrary to law, not detrimental to third parties, executable, and made in good faith of the parties.

Within a maximum period of 30 days after the hearing is closed, the Deed of Settlement must have been pronounced by the Sole Arbitrator or the Arbitration Council. The Secretary shall deliver a copy of the Deed of Settlement to the parties, and may be picked up at the Secretariat by the parties, within a maximum period of 7 days after it is pronounced. The Arbitration Award is final so that no appeal or cassation can be filed (lapssjk.id).

CONCLUSION

From the above research it can be concluded that although LAPS-SJK aims to provide affordable fees, there is no transparency regarding the fee structure charged for different types

of disputes, which can be an obstacle for less well-off parties. Within the confidentiality of the dispute resolution process at LAPS-SJK there are potential problems related to the implementation of decisions that are not voluntarily implemented by the parties. This may pose challenges in the enforcement of the Arbitral Award.

Insurance disputes in Indonesia are a significant problem in the insurance sector, disrupting the relationship between the insured (customer) and the insurer (insurance company). To handle these disputes, the LAPS-SJK has two methods: mediation and arbitration.

Non-litigation mediation is known as a more informal method and aims to reach an agreement between the two parties without going to court. The Mediation Procedure at LAPS-SJK is regulated in the Financial Services Sector Alternative Dispute Resolution Institution Regulation No. Per-01/LAPS-SJK/I/2021 on Mediation Rules and Procedures. The process involves the selection of a neutral and competent mediator, in which both parties must agree to participate. Through a series of steps, from preparation to signing the agreement, Mediation seeks to identify key issues and explore solution options, creating a space for constructive dialog.

On the other hand, the Arbitration process at LAPS-SJK provides an alternative way to resolve disputes through a more formal procedure. The Arbitration Procedure is set out in LAPS-SJK Regulation No. Per-02/LAPS-SJK/I/2021 on Arbitration Rules and Procedures.

Arbitration requires a written agreement between the parties to the dispute, with the process including submission of a request, selection of an arbitrator, and a hearing to hear arguments and evidence. The resulting decision is final and binding, and maintains the confidentiality of the information involved.

This research shows that dispute resolution through Mediation and Arbitration can be an effective solution to reduce insurance disputes in Indonesia. By promoting compromise dialog, these two methods have the potential to increase customer and insurance company satisfaction, and strengthen public confidence in the insurance industry. In the future, it is important to increase the socialization of this mechanism so that more parties take advantage of existing alternative dispute resolution

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