

THE AUTHORITY OF THE ALTERNATIVE DISPUTE RESOLUTION AGENCIES IN THE INSURANCE SECTOR UNDER INDONESIAN LAWS

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ABSTRACT

This study examines the mechanism and authority involved in resolving consumer disputes within the insurance sector. The study adopts a normative juridical method to analyze the topic comprehensively. Initially, it provides an overview of the mechanism employed to address consumer disputes in the insurance sector. Subsequently, it delves into an examination of the authority responsible for handling such disputes in Indonesia, particularly focusing on out-of-court alternative dispute resolution methods. The findings of the study reveal that insurance customers resort to various dispute resolution measures when faced with claim defaults by insurance companies. These measures include initiating civil lawsuits in the District Court and filing reports through either the Consumer Dispute Settlement Agency or the Indonesian Insurance Mediation Agency. It is important to note that the resolution of insurance disputes should adhere to the terms and conditions outlined

in the Insurance Policy, as it represents a binding agreement between the insurer and the insured

Keyword: Dispute Resolution; Insurance; Consumer Protection; LAPS-SJK;

INTRODUCTION

The future remains shrouded in uncertainty, making it impossible for humans to possess complete knowledge of what lies ahead. In light of this, individuals must equip themselves to confront the diverse perils that may arise in the future. To address this need, the concept of insurance has emerged as a protective system. While insurance cannot prevent the occurrence of adverse risks, it serves as a means to mitigate their detrimental effects. Moreover, insurance can provide compensation for the losses incurred as a result of these risks. For instance, in the case of life insurance, it cannot avert the inevitability of death, but it can alleviate some of the associated financial burdens.

The protection agreement between the insurance company, known as the Insurer, and the insurance customer, referred to as the Insured, is formalized through a written document called an insurance policy. The primary purpose of this agreement is to transfer the risk associated with uncertain events and alleviate or eliminate the financial burden that may arise from such risks. In this arrangement, the party that has suffered a loss seeks out another party willing to assume the risk and provide compensation in the form of premium payments (Putri & Rahayu, 2019). Meanwhile, the parties' agreement to be bound by the insurance agreement is stated as a policy. The Insured must pay a premium, a certain amount of money, to the insurance company regularly. Then, the insurance company provides a full guarantee to the Insured if the agreed risk occurs.

The practice of insurance in Indonesia began in the Dutch colonial period. De Nederland van 1845, a life and loss insurance company from the Netherlands, opened a branch in the Dutch East Indies named *Nederlandsch-Indische Levensverzekerings en Lijfrente Maatschappij* (Sari, Nurpuspitaningsih, & Medina, 2021), with the insured generally being Dutch and a handful of indigenous people

whose socioeconomic status allowed them to pay insurance (Rahardjo & Supardi, 2020).

Insurance is fully regulated in Chapter IX of the Commercial Code and separately in Law Number 40 of 2014 on Insurance (“Insurance Law”). The definition of insurance is clearly stated in Article 246 of the Commercial Code.

Although it has been fully regulated in the Commercial Code and the Insurance Law, insurance disputes are often in practice. In this case, the insured, as a consumer, needs a dispute resolution system that can produce decisions quickly. Non-litigation dispute resolution as an alternative to litigation through the courts plays a significant role in resolving disputes in the insurance sector. It is common knowledge that business transactions do not always run smoothly, so business contract always has a clause regarding dispute resolution. This ensures that the parties get certainty if one of the parties does not carry out their obligations in an agreement (Gaffar, Karsona, Pujiwati, & Perwira, 2021).

As per Article 58 Law Number 48 of 2009 concerning Judicial Authority, settlement of civil disputes can be carried out through an out-of-court mechanism, based on peace or through arbitration, which is better known as an alternative dispute resolution (“ADR”), also includes sharia arbitration (Musjtari & Nurdin, 2021).

The application of the ADR mechanism is a hereditary custom in Indonesia guided by the principle of balance and harmony in a society that adheres to the principle of deliberation to reach an agreement to resolve a dispute. It is also helpful in reducing the queue of court cases and realizing justice in the form of a win-win solution (Wiguna, 2018).

Indonesia has a litigation and non-litigation mechanisms for dispute resolution. The state judiciary carries out litigation settlements. The final nature of court decisions characterizes this litigation settlement, and there is a win-and-lose position (Kurniasari, 2020). On the other hand, the non-litigation ADR mechanism is carried out by an authorized institution that can resolve the dispute using the methods of negotiation, mediation, and arbitration. In the context of consumer protection in the insurance sector, the authorized ADR institutions include the

Consumer Dispute Settlement Agency (“CDSA”; *Badan Penyelesaian Sengketa Konsumen*) and the Financial Services Sector ADR Agency (“FSS ADR Agency”; *Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan*).

Insurance disputes usually start with a dispute over insurance claims stated in the insurance policy. For example, the mega-corruption cases that occurred at state-owned insurance companies, namely PT Asuransi Jiwasraya (Persero) and PT Asabri (Persero), resulted in a total state loss of IDR 39.59 trillion (equivalent to USD 2.63 million), of course, raised concerns and even fear for the customers of the two insurance companies regarding the fulfilment of their financial rights.

As consumers, many people decide to go to court to resolve disputes directly through litigation because it is considered the only judicial forum to guarantee legal certainty (Arsalan & Putri, 2020). They often do not know about other resolutions than through the courts. In this case, there are gaps between the insured, insurance companies, and ADR institutions in handling cases (Blankley, Votruba, Bartz, & PytlikZillig, 2021). Positive law in Indonesia gives consumers the right to choose a dispute resolution forum through court or out of court. However, instead of being an effective and quick way to resolve most disputes (Liubin, 2018), options for resolving this dispute out of court instead raise confusion and uncertainty for consumers regarding the choice of non-litigation dispute resolution forum, whether through CDSA or FSS ADR Agency or going to courts to resolve disputes directly through litigation. This confusion is in the case of consumers in dispute, namely end users, such as consumers in the banking, insurance, and financing sectors and pawnshop sectors.

The author believes it is essential to conduct additional research on the authority of these agencies to identify the mechanisms and the principal authorities to handle consumer disputes in the insurance sector because insurance customers expect immediate repayment for financial losses they face, as promised by insurance companies, and to provide legal certainty for insurance customers in resolving insurance disputes, they may face in the future.

The topic of insurance dispute resolution through the FSS-ADR Agency has been covered in publications by (Saragih, 2017), (Ulinihayati & Husein, 2022), (Wahyulina & Chrisdanty, 2018), and (Andryawan, 2018). These four studies have

different focuses. R. F. Saragih did a study on the need to establish an alternate dispute resolution system separate from the court's resolution mechanism. Ni'ma Ulinihayati & Yunus Husein focused their research on explaining insurance dispute resolution mechanisms by reviewing Law Number 21 of 2011 on Financial Services Authority ("FSA Law") and FSA Regulation Number 61/POJK.07/2020 on Financial Services Sector Alternative Dispute Resolution Agency ("FSA Regulation 61/2020"). Diah Wahyulina & Febry Chrisdanty conducted a study to determine the supervisory jurisdiction between the CDSA and the FSA with respect to the implementation of standard provisions in financial products. Andryawan's research only examines the duality in managing claims related to the CDSA and the FSS ADR Agency. This four research are still not sufficient to answer questions regarding the authorized party as ADR in the insurance sector. In addition, our research presents readers with concrete events of real-life cases. Specifically, we examine five cases that highlight the ambiguity surrounding the public's perception of dispute resolution methods in the insurance sector, such as initiating civil lawsuits in the District Court or obtaining resolution through the CDSA and the Indonesian Insurance Mediation Agency (*Badan Mediasi Arbitrase Asuransi Indonesia*; "BMAI"). These cases yield varied outcomes and decisions, highlighting the range of treatment options available. It is crucial to offer enlightenment to the readers of this article.

To enhance reader comprehension and facilitate the understanding of the author's ideas, the initial focus of this discussion will be on providing a comprehensive overview and analysis of the relevant issues related to the problem within the Indonesian legal framework. Specifically, attention will be given to the Consumer Protection Law, Alternative Dispute Resolution mechanisms, and Consumer Dispute Resolution processes within the Insurance Sector. Subsequently, the author will examine the primary study problem, specifically the leading authorities responsible for managing consumer dispute resolution within the insurance industry.

RESEARCH METHOD

The research method that applied in this study is a normative juridical method because the research focuses on his analysis of the laws and regulations that apply and are relevant to the legal issues studied (Johan & Ariawan, 2021), specifically concerning consumer dispute resolution in the insurance sector. The study evaluated legal provisions and compared them to reality regarding mechanisms and authorities for handling consumer dispute resolution in the insurance sector. It analyzed the competent institutions and laws to see how effective and efficient it was in the sector and identify gaps.

To obtain the data needed in writing this research, it was carried out through library research and supplemented by field research in the hope of completing library data. Library research searched primary, secondary, and tertiary legal materials (Medaline, Nurhayati, & Fatmawati, 2022). All three of which are secondary data will become the primary data in this study (Budianto, 2022). The data sources in this study are as follows: The 1945 Constitution, Insurance Law, Law Number 8 of 1999 on Consumer Protection (“Consumer Protection Law”), Law Number 21 of 2011 on Financial Services Authority, Law Number 48 of 2009 on Judicial Authority, and District Court decisions.

Secondary legal materials, namely library materials are closely related to the law of primary legal materials, can help analyze and understand primary materials. In contrast, the secondary materials used consist of writings by legal experts in the form of books, papers, articles, and documents relevant to this title. This study employed books, journals, and legal research findings linked to the subject under consideration as secondary legal materials. Tertiary legal materials include legal dictionaries, electronic mass media pieces, and other required reading sources.

The author provides a general description and review of consumer protection and alternative dispute resolution in the next section. Furthermore, based on the general review referred to, the author analyses consumer dispute resolution in the insurance sector and, in the end, will be able to determine the most appropriate institution and have the authority to handle insurance disputes, whether it is CDSA, FSS-ADR-Agency, or maybe the Court so that it can create certainty for the people of Indonesia in resolving insurance disputes.

The author begins the analysis by providing an overview of the general description and regulations relevant to the issue: the Consumer Protection Law, Alternative Dispute Resolution, and Consumer Dispute Resolution in the Insurance Sector, as stipulated by Indonesian law. This explanation provides a comprehensive overview of the positive laws governing the insurance sector in Indonesia, encompassing the underlying philosophical principles embodied in the numerous legislative rules in place. Moreover, after thoroughly examining the various regulatory aspects within the legislation mentioned above, the author analyzes to determine the leading authority responsible for managing consumer dispute resolution within the insurance industry. This evaluation considers the effectiveness of alternative dispute resolution mechanisms such as the CDSA or the FSS-ADR Agency and the potential benefits of pursuing litigation through civil lawsuits in the District Court.

RESEARCH OUTCOME AND DISCUSSION

1) Consumer Protection Law Overview

Consumer protection is all efforts that ensure legal certainty to protect consumers. Consumer Protection Law is the leading consumer protection legal instrument. Consumer protection law protects buyers from coercion, deception, and other difficult-to-avoid or guard-against influences. Still, it does not protect buyers from the milder, knowable influences of things like "image" advertising, which consumers can ignore (Averitt & Lande, 2007).

The interaction between producers and consumers is generally a continual one. This connection exists because they really want each other and rely heavily on each other. Producers need and are reliant on customer support. Producers cannot ensure their company's longevity without customer backing (Imaniyati & Syawali, 2000).

Human-needs products and services are getting more complex, resulting in information accuracy and consumer response gaps (Kristiyanti, 2018). Because of this poor consumer position, manufacturers or producers may sell goods or services without regard for consumer rights. Producers bear the duty to guarantee the safety

of a product so that it does not cause harm to customers since they are familiar with its composition and potential safety hazards.

Consumer Protection Law, as an umbrella law in consumer protection (Rahmayani, 2018), regulates consumer protection policies concerning material law and formal law regarding consumer dispute resolution. Consumer protection focuses on guarantees and legal certainty in protecting consumers. In addition, consumers in the Consumer Protection Law have specific criteria: 1) they are users of goods and services sold by business actors/producers, and 2) they are end users of goods that are not for trading (Purwoko, Riyanto, & Turisno, 2017).

Article 45 to Article 60 of the Consumer Protection Law describes the methods for consumer dispute resolution as follows: 1) in-court resolution, 2) alternative dispute resolution, 3) criminal court resolutions, and 4) administrative court resolution (Aziz & Hidayah, 2020). Consumer disputes are not intended as disputes in a broad sense, namely disputes that cover criminal law and state administrative law, because the Consumer Protection Law regulates dispute resolutions that are dual and alternative (Kahpi, 2019).

The legal relationship between consumers and producers is not balanced when the position of producers is more robust due to standard agreements prepared by producers. On the other hand, consumers' positions are usually weaker due to needs and economic factors (Rinaldo, 2019). The legal relationship is the reciprocal relationship between the rights and obligations of consumers and business actors in the agreement, as referred to in Articles 4 to Article 7 of the Consumer Protection Law. In addition, healthy business activities should balance legal protection between consumers and producers (Nurhafni & Bintang, 2018).

Consumer protection comes in two forms. The first is provided by law and comes from agreements as the principle of freedom of contract, in which both parties consent to agree upon any form of contract (Mifanyira, M.J, & A, 2020). According to Article 1338 of the Civil Code, an agreement is a law for those who make it, so it can be said that a contractual agreement should be protected – *pacta sunt servanda* (Eicher, 2018).

In the event of a consumer dispute with a business actor, there are four consumer protection law enforcement agencies in Indonesia, namely the Ministry of Trade,

the National Consumer Protection Agency, the CDSA, and the Nongovernmental Consumer Protection Agency (Perdana, 2021).

2) Overview of Alternative Dispute Resolution

Disputes can occur at any time and in any place. Individuals with individuals, individuals with groups, groups with groups, companies with companies, companies with governments, one country with another, and so on. In other words, disagreements can be public or civil and occur nationally and internationally (Amriani, 2011).

In contract law, disputes arise between the parties to the agreement because one violates the agreement (Li, Palanisamy, & Xu, 2019), either in part or whole. Disputes in the agreement arise because of a default by one of the parties because it does not fulfill its obligations, resulting in losses to the other party, whether social or economic (Parella, 2021).

Dispute resolution can be made in two ways: through litigation and non-litigation. The non-litigation settlement out of court is a win-win solution, in contrast to the litigation settlement through the courts, which tends to result in a win-lose solution. Therefore, out-of-court settlement of civil disputes through arbitration or alternative dispute resolution has been regulated in Chapter XII of the Judicial Authority Law concerning Out of Court Dispute Resolution.

The procedure for resolving disputes made in an agreement containing an arbitration clause, which is made before a dispute occurs, can be at the same time as the main agreement or after that and made after a dispute regarding the implementation of an agreement occurs as contained in Article 2 of Law Number 30 of 1999 on Arbitration and ADR (Leonard, Pakpahan, Heriyati, Karjoko. Lego, & Handayani, 2020).

Regarding the dispute, the parties negotiate to obtain a deal. If it is unsuccessful, the parties will carry out with the assistance of a mediator. If it fails, the parties may choose to continue the dispute through arbitration if the choice of arbitration forum has been previously agreed upon in the agreement, or the parties may choose a resolution by litigation. If a deal is reached, both at the internal

negotiation or at the mediation stage, the parties make a mutual agreement, which is then registered with the court so that it is binding (Harahap & Santiago, 2023).

The selection of dispute resolution through mediation or arbitration services is based on the dispute resolution clause in the insurance policy or the dispute resolution agreement signed by the parties after a dispute (Ulinihayati & Husein, 2022).

3) Consumer Dispute Resolution in the Insurance Sector

Insurance customers are consumers of insurance companies as business actors in the insurance sector. Transactions and legal relationships occur based on an agreement between the two parties, which is contained in the insurance policy, which is an agreement between the two parties. Insured as insurance customers have the right to be protected under the Consumer Protection Law. Consumer rights have a reciprocal relationship with consumer obligations. This is also reciprocally related to the rights and obligations of business actors (Temkina & Rivkin-Fish, 2020).

As an umbrella law in consumer protection, the Consumer Protection Law does not define consumer disputes (Dwirainaningsih, 2018). However, the definition of consumer disputes can be found in Article 1 number (8) of Decree of the Minister of Industry and Trade Number: 350/MPP/KEP/12/2001 concerning the Implementation of the Duties and Authorities of the Consumer Dispute Settlement Agency ("CDSA Decree").

The FSA Law explicitly regulates activities in the financial services sector, including insurance, but does not explicitly define consumer disputes. However, the dispute is defined in Article 1 Point (6) of the FSA Regulation 61/2020. The definition of "dispute" in the CDSA Decree and FSA Regulation 61/2020 is related to the consumer's right to obtain compensation for the losses suffered in connection with the promise of protection from the insurance company, which has previously been agreed upon in the insurance policy.

In resolving disputes in the insurance sector, the FSA, as an authority in the financial services sector, has established a FSS ADR Agency, which functions as a special ADR Agency related to disputes in the financial services sector, including disputes in the insurance sector FSS ADR Agency is a single ADR Agency

replacing the functions of the previous six ADR agencies in the financial services sector, included the BMAI. The other five ADR agencies in the financial services sector that have been merged into the FSS ADR Agency are: Indonesian Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia*; BAPMI), Pension Fund Mediation Board (*Badan Mediasi Dana Pensiun*; BMDP), Indonesian Banking Alternative Dispute Resolution Institution (*Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia*; LAPSPI), Indonesian Guarantee Company Mediation Agency (*Badan Mediasi Perusahaan Penjaminan Indonesia*; BAMPPPI), dan Indonesian Financing, Pawnshop and Venture Mediation Agency (*Badan Mediasi Pembiayaan, Pegadaian, dan Venture Indonesia*; BMPPVI).

The insurance policy is a contract between the consumer as the Insured and the insurance company as the Insurer. The contents of the policy in insurance are generally specified in Article 256 of the KUHD, except for life insurance (Putra, Aswariningsih, Napitupulu, & Safrizal, 2022).

Insurance disputes are related to claims on insurance policies between customers and insurance companies. From the Insured's point of view, the insurance company is often deemed to have defaulted, usually not paying the proposed insurance claim. The insurer has been considered a stronger party because it controls the process of the agreement (Chumaida, 2014). Defaults can include: 1) not meeting any achievements at all; 2) meeting the achievements but not as well as they should be; 3) meeting the achievements but late; and 4) engaging in prohibited behavior (Nurcahyani, 2023).

As per an agreement, dispute resolution has been regulated in the insurance policy. The Indonesian General Insurance Association ("AAUI") has drafted a "Dispute Clause" in a standard policy that every insurance company will issue as a member of AAUI. For example, the "Dispute Clause" in the Fire Insurance Standard Policy is attached to the AAUI Decree No. 14/SK.AAUI/2016, which can be seen in the following:

Figure 1. Dispute Clauses in a Fire Insurance Standard Policy

ARTICLE 24

DISPUTE CLAUSE

24.1. In the event that a dispute arises between the Insurer and the Insured as a result of the interpretation of the responsibility or amount of compensation from this Policy, the dispute will be resolved through a peace forum or deliberation by the Insurer's internal unit which handles services and complaints for consumers. Disputes arise since the insured has stated in writing his disagreement on the matter in dispute. Settlement of disputes through reconciliation or deliberation is carried out within a maximum period of 60 (sixty) calendar days from the onset of the dispute.

24.2. If the resolutions of the dispute through peace or deliberation as regulated in paragraph 1 does not reach an agreement, then the disagreement must be stated in writing by the insurer and the insured. Furthermore, the Insured can choose dispute resolution outside the court or through the court by choosing one of the dispute resolution clauses as set out below.

A. INSTITUTIONS FOR ALTERNATIVE DISPUTE RESOLUTION

It is hereby stated and agreed that the Insured and the Insurer will settle the dispute through the Indonesian Insurance Mediation and Arbitration Agency (BMAI) in accordance with the BMAI Rules and Procedures or through other institutions for alternative insurance dispute resolution registered with the Financial Services Authority.

B. COURT

It is hereby stated and agreed that the Insured and the Insurer will settle the dispute through the District Court in the territory of the Republic of Indonesia.

Source: The Indonesian General Insurance Association (AAUI); translated

Based on FSA Regulation Number: 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector ("FSA Regulation 01/2013") and FSA Regulation 61/2020, it can be concluded that the dispute resolution mechanism in the insurance sector is pursued through two stages (Pratama, Solehuddin, & Astanti, 2021), internal settlement by each insurance company through a complaint mechanism as stipulated in Articles 32 to 38 FSA Regulation 01/2013 and external settlement through judicial institutions or institutions outside the court as stipulated in Article 39 paragraphs (1) and (2) FSA Regulation 01/2013.

Consumer complaints related to insurance claim disputes must be resolved internally between consumers and the insurance company concerned by prioritizing deliberation and negotiation methods. After a dispute occurs, where the customer and the insurance company fail to reach a peace agreement at the internal settlement stage, the consumer has the right to choose the following dispute resolution forum: litigation through the courts or non-litigation through FSS ADR Agency.

Litigation dispute resolution is conducted by conducting a civil lawsuit in the District Court. Therefore, it must follow the provisions of civil proceedings, including the agenda of reconciling the parties, mediation, reading the lawsuit, the answer agenda, *replica*, *duplicate*, evidentiary, conclusions, and reading the judge's verdict (Kurniawan, 2020). Dispute resolution through litigation as an effort to

apply the principle of *ultimum remedium* can be taken if other methods, such as mediation, deliberations, and negotiations, do not find agreement (Muhtadi & Israhadi, 2022).

4) Consumer Dispute Settlement Authority in the Insurance Sector

The Consumer Protection Law and FSA Regulation 61/2020 have out-of-court dispute resolution mechanisms, giving consumers the right to choose a dispute resolution forum through or out of court (Suwandono, 2017). However, instead of being an effective and quick way to resolve most disputes, options for resolving this dispute out of court instead raise confusion and uncertainty for consumers regarding the choice of non-litigation dispute resolution forum, whether through CDSA or FSS ADR Agency. This confusion is in the case of consumers in dispute, namely end users, such as consumers in the banking, insurance, and financing sectors and pawnshop sectors. On the other hand, customers in the financial services sector who are not end users, like investors in the capital market who use stockbroker (*Wakil Perantara Pedagang Efek*) services, may not face this confusion. This is because they are not objects regulated by the Consumer Protection Law, so they are not eligible for protection from CDSA. Instead, they will report directly to the FSS ADR Agency.

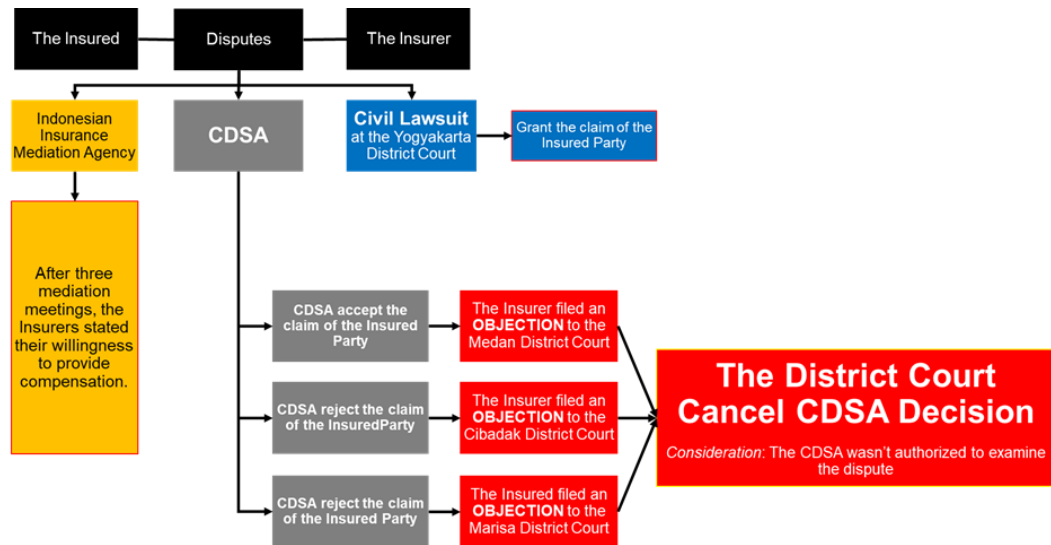
The following are some examples of cases regarding the different follow-up actions taken by Insureds when they experience a default from the insurance company:

1. The case of a motor vehicle insurance claim by a rubber and oil palm plantation company in February 2015 was followed up by the insured with an out-of-court settlement through the Indonesian Insurance Mediation Agency. After three mediation meetings, the Insurers stated their willingness to provide compensation.
2. Life Insurance Policy Case No. 10637915, issued by PT Prudential Life Assurance, was followed up by the Insured with an out-of-court settlement through CDSA Medan. CDSA's was to accept the claim of the Reporting Party. However, the insurance company then objected to the Medan District Court,

which the Court granted, considering that CDSA was not authorized to examine the dispute because it was not a consumer dispute but a civil insurance dispute.

3. BNI Life Plan Multi Protection Life Insurance Policy Case No. The Insured followed up BLPM9172089237 with out-of-court settlements through CDSA Sukabumi. CDSA's was to accept the claim of the Reporting Party. Then, the insurance company filed an objection to the Cibadak District Court. The Court granted it, considering that CDSA was not authorized to examine the dispute because of the choice of dispute resolution forum in Article 31 of the life insurance policy that had been mutually agreed upon only through arbitration, court, or ADR Agency.
4. Policy Certificate Case No. 003598273906, issued by Asuransi Manulife Primajaga 100, was followed up by the insured with out-of-court settlements through CDSA Pohuwato. CDSA's was to reject the claim of the Reporting Party. Then, the Insured filed an objection to the Marisa District Court, which the Court granted, considering that CDSA was not authorized to examine and adjudicate the case because it had passed the stipulation of the consumer dispute settlement time limit, which was a maximum of 21 days.
5. Insurance Policy Case Number 2003428507 and Number 212103096598, issued by the AJB Bumiputera 1912, were followed up by the Insured with a settlement through the court by filing a civil lawsuit at the Yogyakarta District Court. The court decided to grant the claim of the Reporting Party.

Figure 2. Settlements of Insurance Customer Disputes



Source: Huta Disyon, 2023.

In the context of consumer protection in the insurance sector related to the dualism of the regulations as referred to in the Consumer Protection Law and the FSA Regulation 61/2020, the following analysis can be submitted:

1. Based on the principle of *lex posterior derogat legi priori* and noting that the Insurance Law and the FSA Law are regulations issued more recently than the Consumer Protection Law, the Insurance Law and the FSA Law should be used.
2. Based on the principle of *lex specialis derogat legi generali*, noting that the substances regulated in the two regulations are not the same, the application of the Insurance Law and the FSA Law as *lex specialis* cannot be fully implemented. Therefore, consumers of the financial services sector who are not end-users, such as investment managers, cannot use the Consumer Protection Law. However, non-litigation dispute resolution should be made through the FSS ADR Agency or CDSA for end-users like insurance consumers.
3. Based on the principle of *lex superior derogat legi inferiori* and noting that the settlement of consumer disputes through the ADR Agency is a mandate of Article 31 of the FSS ADR Agency and Article 54 of the Insurance Law, in

essence, the position of FSS ADR Agency based on FSA Regulation 01/2013 and FSA Regulation 61/2020 is not lower than the position of CDSA based on Consumer Protection Law. Consequently, the non-litigation dispute resolution should be made through the FSS ADR Agency and CDSA.

4. Based on the principle of *pacta sunt servanda* in the policy, which is a contract between the insurance company and the Insured, and noting that the dispute resolution clause in the policy does not conflict with positive law, then in essence, the agreement of the two parties to choose an out-of-court settlement through FSS ADR Agency should be given priority to run.

Based on the analysis above, in principle, the legal relationship between consumers and business actors, including the legal relationship between the policyholder as the Insured and the insurance company as the Insurer, is a civil law relationship, namely that any dispute that results in a loss must be settled civilly. Considering the principle of binding force in the agreement and the "Dispute Clause," agreed upon by both parties in the policy, there should be no confusion in the selection of an out-of-court dispute resolution forum for the Insured because the parties previously agreed on a settlement forum in the form of mediation through FSS ADR Agency.

In addition, dispute resolution in the insurance sector should be carried out quickly and effectively to provide certainty for fulfilling consumer rights. This is because the consumers in the insurance sector are those who are in a condition of vulnerability. CDSA is less able to fulfill this aspect of certainty because its decision can still be disputed by one of the aggrieved parties by filing an objection to the District Court, which may conflict with the principles and objectives of consumer protection in Article 3 paragraph (4) and paragraph (5) of the Consumer Protection Law (Nurhafni & Bintang, 2018). This gives the impression that the CDSA's decision is not final and not binding, in contrast to the provisions of Article 54 paragraph (3) of the Consumer Protection Law. Its decisions that the District Court later cancels are often considered unable to provide certainty for customers who need immediate recovery for their risk exposures. The CDSA's decision, which the District Court later annulled, lost its meaning and became meaningless for consumers seeking justice through CDSA (Kurniawan, 2012).

Regarding the certainty aspect, the FSS ADR Agency has an advantage because the decisions issued by the FSS ADR Agency must be obeyed and implemented by insurance companies. Furthermore, the FSS ADR Agency must supervise the implementation of the said decisions, with consequences in the form of sanctions for insurance companies that do not follow up on its decisions.

CONCLUSION

When an insurance dispute, the parties have two options for resolving their differences: pursuing a resolution through the court system or seeking an alternative route outside of court. One such alternative is the utilization of the FSS ADR Agency mechanism. This mechanism provides a platform for the parties to engage in alternative dispute resolution methods, such as mediation or arbitration, to reach a mutually agreeable settlement. By opting for this approach, the parties can potentially avoid the time-consuming and costly process of litigation, while still achieving a fair and satisfactory resolution to their insurance dispute.

The District Courts often reject CDSA decisions involving insurance disputes because there are several mistakes in their decision-making, one of which is that they are not authorized to examine and hear cases. One of the considerations is that there has been a prior agreement between the Insured and the insurance company in the Insurance Agreement (policy) regarding the dispute resolution forum, namely through arbitration, courts, or ADR institutions, and not through CDSA. Settlement of insurance disputes through the FSS-ADR Agency and directly through the Court with a civil lawsuit in the District Court can provide a more definitive decision. However, resolving disputes through the FSS-ADR Agency offers benefits over settlements through the courts or the CDSA; for example, they are confidential and prioritize win-win solutions; they are faster, cheaper, and produce decisions or agreements that are objective, relevant, and fair as per the FSA Regulation 61/2020. Considering the principle of *pacta sunt servanda* and the clauses agreed upon by both parties in the Insurance Agreement, and to obtain a decision that provides legal certainty, both for the Insurer and mainly the Insured, insurance dispute resolution should be conducted through the FSS ADR Agency (formerly the Indonesian

Insurance Mediation Agency) rather than the CDSA. Insurance dispute resolution can include non-litigation procedures and attempts through the courts (litigation) by filing a civil lawsuit in the District Court.

Given the significant authority held by the FSS ADR Agency as the only ADR Institution in the financial services sector, which has replaced the functions of the six previously existing ADR Institution (BAPMI, BMAI, BMDP, LAPSPI, BAMPPPI, and BMPPVI), including the fintech sector, and in light of the growing number of dispute cases in the financial services sector, it is anticipated that the FSS ADR Agency must enhance its institutional capacity to ensure that its services continue to provide fairness and legal certainty for the parties.

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