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### **MEDIATION: AS ONE OF ALTERNATIVES OF INSURANCE DISPUTE RESOLUTION IN INDONESIA**

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#### **Abstract**

Currently, in insurance practice in Indonesia, disputes on insurance claim can be resolved through litigation (Article 1266 of the Indonesian Civil Code) and non litigation, either through Consumer Dispute Resolution Board (Article 56 of Law Number 8 Year 1999 on Consumer Protection); Arbitration or Mediation (Law Number 30 Year 1999 on Arbitration and Alternatives Dispute Resolution). Specifically for insurance claim dispute resolution of nominal amount, i.e., maximum Rp 500 million for general insurance and maximum Rp.300 million for life and social insurance, the Indonesian Insurance Mediation Board (“BMAI”) was established on May 12, 2006 and started to operate on September 25, 2006 base on Joint Decree of Coordinating Minister for Economic Affairs, Governor of Bank Indonesia, Finance Minister and State Minister for the State Owned Companies. The right to resolve dispute through BMAI rests with the insured and is free of charge, provided the claim has already been rejected by the insurance company. The decision shall be final and binding on the insurance company but shall not be binding on the insured. According to BMAI’s data, during its operation up to October 2007, BMAI has handled 70 cases. 40 cases have been processed, consisting of 28 for life insurance and 12 for general insurance. Meanwhile the other 30 cases were not processed, because the insured had accepted the insurance companies’ reasons for rejecting their claim. Out of the 70 cases, 20% came from Jakarta, while 80% came from various regions in Indonesia. Therefore, socialization is still needed, so that the insured can see BMAI as an alternative dispute resolution which could serve as an effective mediator in resolving dispute, so that consequently, the rights of the insured could be protected and insurance companies’ reputation could be well-maintained, all of which will certainly affect the development of insurance industry in Indonesia.

Keywords: mediation, insurance dispute

## A. Introduction

In insurance contracts<sup>1</sup>, legal disputes may occur because any of the parties does not perform its obligation in accordance with the content of the contract that has been mutually agreed. The insurance company, for instance, does not perform its obligation to pay a claim or induces prospective insurance clients by incorrect data. The same thing may also happens to the insured, such as not performing its obligation to pay premium or giving falsified data deliberately; or performing illegal acts, such as creating damage to or destroying the insurance object deliberately in order to get indemnity. As a contract that creates rights and obligations to both parties, a specific law (*lex specialis*) will applies that binds the insurance company and the insured. It means that, if a party does not perform its obligation in accordance with the agreement in the insurance contract, such party shall pay for damages<sup>2</sup>.

At this moment, insurance activities in Indonesia grow fast and various products being offered are also varies, ranging from regular products to derivative products<sup>3</sup> including insurance product developed in collaboration with banks, such as saving insurance product which is similar to saving product as well as non-banking product, for example the unit link<sup>4</sup> and from the side of insurance market development, there is a trend of insurance companies using banks as agent or channel distribution in a collaboration form which is known as banc assurance<sup>5</sup>.

However, this development which is not accompanied by the readiness of the business actors in the insurance industry, for example the human resources issue, and the insurance mentality that cannot be separated from the implementation of the principles of insurable interest<sup>6</sup>, and indemnity,<sup>7</sup> the utmost good faith<sup>8</sup>, often

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<sup>1</sup>Article 1 point (1) of Law No.2 Year 1992 concerning Insurance Business stipulates that an insurance is a contract between two or more parties, by which an insurer binds itself to the insured party by accepting insurance premium, to give indemnity to the insured party for loss, damage, loss of expected profit, or legal liability to third parties, which may be suffered by the insured party arising from an unexpected event or to make payment on the basis of the death or the life of the person being insured.

<sup>2</sup>The provisions that serve as the basis of this insurance regulation are set forth in Book III of the Indonesian Civil Code (*KUHPerdata*); Indonesian Commercial Code (*KUHHD*) and Law No.2 Year 1992 concerning Insurance business, along with the relevant implementing regulations.

<sup>3</sup>Ricardo Simanjuntak, *Various Legal Disputes that May Arise from Insurance Contract and the Resolution thereof*, (Business Law Journal, Vol.26 No.3, 2007), page.74.

<sup>4</sup>A mixed of insurance product and investment product similar to mutual funds product.

<sup>5</sup>Ricardo Simanjuntak, *op.cit.*

<sup>6</sup>Pursuant to Article 250 of the Indonesian Commercial Code, it is stipulated that: “if a person who has taken an insurance for himself, or if a person, for whom an insurance has been taken, does not have an interest on the insured object at the time when the insurance is concluded, the insurer shall not be obliged to give indemnity”. In this Article, the element of interest relates to the object and the person; a person can be regarded as having an interest in the insurance, if such person has a connection or involvement in such a way with the unexpected event, so that when the event occurs, the person will suffers damage (Emmy Pangaribuan Simanjuntak), Yogyakarta, 1989), page 9. However, the element of interest in life insurance cannot be linked with damages, because a person who has interest on his own life in life insurance can be interpreted as a saying only that every person has an interest to insure his life validly for other person as designated by him.

<sup>7</sup> This principle is set forth in Article 252 of the Indonesian Commercial Code that reads: “except for the matters as stipulated in laws, a second insurance cannot be concluded for a stipulated period for its full price and with a sanction of such second insurance being null and void”. In this principle, the indemnity provided to the insured party must be in proportion with the damage suffered, so that a person

becomes an issue that done to get attention in handling high competition in the relatively small Indonesian insurance market<sup>9</sup>, so that in many cases, insurance companies take the attitude of, “get the business opportunity first, the problems will be thought later”. With regard to the principle of utmost good faith, for instance, many insurance companies understand and translate the principle of utmost good faith as a principle that needs to be complied with by the insured only, and not by the insurer, so that as a result of such incorrect understanding, many insurance companies misuse Article 251 of the Indonesian Commercial Code as a veil to free themselves from their obligations when insurance claims occur based on the reason that the insured does not report important matters (non disclosure of material information) that insurance companies must be made aware of prior to the execution of the contract.

In addition to that, agent war and price war become unavoidable, so does the presence of broker (insurance or reinsurance broker) as intermediary party, who often does not understand his obligation as professional broker. This is something that can trigger high potential of insurance business dispute in Indonesia.

In the event that a dispute occurs in connection with such insurance contract, formerly, based on Article 1266 paragraph (4) of the Indonesian Civil Code<sup>10</sup>, it can only be settled through a district court (litigation process). However, in its development, insurance dispute resolution can also be made without having to involve a court of law (out of court settlement), such as through the Consumers Dispute Resolution Board as stipulated in Article 49 paragraph (1) of Law Number 8 Year 1999 concerning Consumer Protection<sup>11</sup>, arbitration<sup>12</sup> and alternative dispute resolution<sup>13</sup>, as regulated in Law Number No.30 Year 1999 concerning Arbitration and Alternative Dispute Resolution.

Dispute resolution through court or out of court settlement constitutes a resolution which basis of determination depends on the contracting parties (party autonomy) when the contract was made. It means that the insurer as well as the insured that have

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cannot insure an object with more than one insurance company at the same time for full coverage for the same period of time and against the same peril.

<sup>8</sup>Article 251 of the Indonesian Commercial Code provides that: “Any misrepresentation or incorrect statement or any omission of notification of matters known to the insured party, despite of the insured party’s good faith, in such a nature, so that if only the insurer had known the truth, the contract will not be concluded under the same terms, shall cause the insurance to become null and void. This article is closely related to the obligation of the insured party to inform everything regarding the insurance object, and violation of this article by the insured will render the insurance contract null and void.

<sup>9</sup> Ricardo Simanjuntak, *op.cit*

<sup>10</sup>The article reads “...The judge is free to, pursuant to the condition, upon the defendant’s request, gives a period of time to perform its obligation”.

<sup>11</sup>The Government establishes the Consumers Dispute Resolution Board at Second Level Regions to resolve consumer dispute outside of court, through mediation, conciliation or arbitration (Article 52 sub a of Law No. 8 Year 1999).

<sup>12</sup>Article 1 point (1) of Law No.30 Year 1999 concerning Arbitration and Alternative Dispute Resolution stipulates that: “arbitration is a method of civil dispute-out of court-resolution which is based on arbitration agreement made in writing by the disputing parties”.

<sup>13</sup>Article 1 point (10), *ibid*, states that: “Alternative Dispute Resolution is an institution of dispute or difference of opinion resolution through a procedure that is agreed by the parties, namely out of court settlement through consultation, mediation, negotiation, conciliation or expert opinion.

been bound by an insurance contract shall expressly state a clause regarding dispute. Hence, should a dispute occurs, the parties can apply the agreed clause of the agreement to settle their dispute.

Out of such various alternatives dispute resolution, the focus of this paper is the insurance dispute resolution by mediation.

## **B. Definition of Mediation**

Law Number 30 Year 1999 does not stipulate specifically the definition of mediation, but based on experts' opinion, mediation shall mean as follows.

1. Mark E. Roszkowski

“Mediation is relatively informal process in which a neutral third party, the mediator, helps to resolve a dispute. In many respect, therefore, mediator can be considered as structured negotiation in which the mediator facilitates the process”.<sup>14</sup>

2. Kimberlee K. Kovach

“Facilitated negotiation, it is a process by which a neutral third party, the mediator, assists disputing parties in reaching a mutually satisfactory resolution”.<sup>15</sup>

3. Christopher W. Moore

“Mediation is an intervention in a dispute or negotiation by a third party acceptable to the disputing parties, not a part of both parties and neutral. The third party does not have the authority to make decision. The third party shall have the task to assist the disputing parties to voluntarily agree to achieve consensus acceptable to the respective parties in a dispute”.<sup>16</sup>

4. Black's Law Dictionary

“Mediation is private, informal dispute resolution process in which a neutral third person, the mediator, helps, disputing parties to reach an agreement”.<sup>17</sup>

5. Extensive Dictionary of the Indonesian Language (*Kamus Besar Bahasa Indonesia*)

“Mediation: a process of involving a third party in resolving a dispute as an adviser. Mediator: is a mediator (liaison, arbitrator) for the disputing parties”.<sup>18</sup>

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<sup>14</sup>Mark. E. Roszkowski in the book Business Law, Principle, Cases and Policy, as cited by Gunawan Wijaya and Ahmad Yani, *Buisness Law Series: Arbitration Law* (Jakarta, 2000), page 33.

<sup>15</sup>Kimberlee K. Kovach. *Mediation Principles and Practice*, (St. Paul, 1994), page 16.

<sup>16</sup>Christopher W. Moore. *Environmental Mediation*, (Jakarta, 1995), page 18.

<sup>17</sup>*Ibid.*

<sup>18</sup>Preparation Team for the Dictionary of the Center for Fostering and Development of Language, *Extensive Dictionary of the Indonesian Language*. (Jakarta, 1988), page 569.

6. Article 1 paragraph (4) of the Decision Letter No.001/SK-BMAI/09.2006 concerning the Handling Process of Disputes by Mediation and/or Adjudication

“Mediation is a process of dispute resolution through efforts of deliberation for consensus between a petitioner<sup>19</sup> and a member<sup>20</sup> facilitated by a mediator<sup>21</sup>”.

Based on the aforementioned definitions of mediation, it can be concluded that mediation is a means to resolve dispute outside of court through negotiation which involves a third party (mediator) that acts neutrally (non intervention) and impartial to each of the disputing parties and whose presence is acceptable to the disputing parties<sup>22</sup>.

The mediator shall have the task solely to assist the disputing parties in resolving their problems and shall not have the authority to make decision or shall only act as facilitator in helping and finding out solution for the disputing parties. The outcome of the agreement shall then be stated as a mutual agreement. The decision making shall not lie in the hands of the mediator, but in the hands of the disputing parties<sup>23</sup>.

This process of dispute resolution through mediation is also effective for disputes that involve many parties or the public, such as environmental damage dispute, land acquisition dispute, labor dispute, consumer protection etc,<sup>24</sup> including insurance disputes as well.

### C. The Indonesian Insurance Mediation Board (BMAI)

The Indonesian Insurance Mediation Board is an independent and impartial institution that provides service of insurance claim dispute resolution (claim for indemnity or benefit) between insurance companies and the insured or policy holder.

The presence of Insurance Mediation in Indonesia has been long expected by all parties, particularly the insurance industry. At least, this comes from the event of bankruptcy of PT Asuransi Jiwa Manulife and Prudential Life a few years ago. Since that event, there has been a trend to file for insurance companies' bankruptcy by an insured in order to force the insurance company to pay a claim, so that it creates disturbance in the insurance industry in Indonesia. Through the long struggle of the insurance industry society, the regulation related to bankruptcy is then revised, where

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<sup>19</sup>The petitioner is a customer who has a relationship with a member or a person who has an interest to receive the benefit of an insurance contract including a person on whose behalf an insurance contract is made or a person who has an interest to receive a benefit of an insurance claim arising from a contract, law or subrogation, or an insured named in the insurance policy or a third party who has the right stipulated in the insurance policy to bring a claim with regard to an insurance contract that insure or that is extended to cover insurance toward third party (Article 1 point (10)).

<sup>20</sup>Members are insurance companies or reinsurance companies registered and meeting the requirements of BMAI membership (Article 1 point (9)).

<sup>21</sup>Permanent employees of BMAI who are authorized to conduct investigation in dispute mediation process submitted by a petitioner to BMAI (Article 1 point (6)).

<sup>22</sup>Rachmadi Usman, *Out of Court Dispute Resolution Alternative*, (Bandung, 2003), page 82

<sup>23</sup>*Ibid.*

<sup>24</sup>Munir Fuady, *National Arbitration, Business Dispute Resolution Alternative* (Bandung, 2000), page 48

the insured party no longer can easily file for the insurance company's bankruptcy. The only party that is entitled to file for bankruptcy is the Minister of Finance<sup>25</sup>.

In addition to that, insurance dispute resolution techniques that in fact is not always settled through the court or arbitration, makes the insurance industry of the entire Indonesian Insurance Companies Association (*Asosiasi Perusahaan Perasuransian Indonesia/FAPI*), namely the Indonesian General Insurance Association (*Asosiasi Asuransi Umum Indonesia/AAUI*), the Indonesian Life Insurance Association (*Asosiasi Asuransi Jiwa Indonesia/AAJI*) and the Indonesian Social Security Insurance Association (*Asosiasi Asuransi Jaminan Sosial Indonesia/AAJSI*) with the support of the government agree to develop an insurance dispute resolution technique through mediation and adjudication<sup>26</sup>. BMAI formally was established on May 12, 2006 and started to operate on September 25, 2006 based on the Joint Decree of the Coordinating Minister of Economic (No.KEP-45/M.EKON/07/2006); Governor of Bank Indonesia (No.8/ SD/ KEP.GBI /2006); Minister of Finance (No.357/KMK.012/2006) and the State Minister of the State-Owned Companies (No.KEP-75/MBU/2006) concerning the Financial Sector Policy Package which was stipulated in Jakarta on July 5, 2006, and also based on Attachment III of Non-Bank Financial Institutions point-3, program-3 concerning the Policy Holders Protection with the Department of Finance of the Republic of Indonesia as the Responsible Institution<sup>27</sup>. The establishment and operation of BMAI are financed by the insurance and reinsurance business actors.

The establishment of BMAI is aimed at providing a more professional and transparent service based on the satisfaction, protection and enforcement of the insured or policy holders' rights. This dispute resolution alternative through BMAI is a facility accorded to the insured parties, not to insurance companies, to choose dispute resolution through BMAI or the court.

The advantage of BMAI as a one-stop-service agency that is easy to access by the insured society or the policy holders to settle claim disputes in the form of claim for indemnity and to provide easy solutions to insured parties who cannot afford to settle a case through the court or cannot afford to pay expensive legal assistance fee.<sup>28</sup>

Pursuant to Article 3 of the Decision Letter No.001/SK-BMAI/09.2006 regarding the Handling Process of Disputes through Mediation and/or Adjudication, disputes that can be handled by BMAI shall be:

1. Any form of complaint or objection (referred to as dispute) from party(ies) who have interest on an insurance police coverage (petitioner) in connection with claim for indemnity or insurance benefit;

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<sup>25</sup>Article 2 paragraph (5) of Law No.37 Year 2004 concerning Bankruptcy and Suspension of Debt Payment Obligation.

<sup>26</sup>Out of court of arbitration and out of court of law dispute resolution method agreed by the parties to be resolved through BMAI with a maximum insurance claim as stipulated in BMAI Regulation (Article 1 point (7) Decision Letter No.001/SK-BMAI/09.2006 concerning the Handling Process of Disputes through Mediation and/or Adjudication

<sup>27</sup>Comprehensively regarding the Indonesian Insurance Mediation Board.

<sup>28</sup>*Ibid.*

2. The amount of the disputing indemnity claim or insurance benefit does not exceed Rp 500 (five hundred) million Rupiah for general insurance and Rp 300 (three hundred) million Rupiah for life insurance or social security insurance;
3. Any dispute that has never been filed by a petitioner against a member, so that the member has never had an opportunity to settle it directly, shall be regarded as a complaint and if submitted to BMAI, then BMAI will refer it back to the member to obtain consideration first;
4. The scope of the jurisdiction of BMAI covers only the disputes with respect to the members' or their representatives' activities doing business in the territory of the Republic of Indonesia.

In addition to that, based on Article 4 of the Decision Letter No.001/SK-BMAI/09.2006 concerning the Handling Process of Disputes through Mediation and/or Adjudication, there are 8 disputes that are excluded or cannot be processed by BMAI, namely:

1. Decisions made on the basis of commercial consideration;
2. Pricing policy and other policies, such as premium rate, fees and foreign currency exchange rate;
3. Cases in the process of investigation by the authorities, including alleged fraud or criminal act cases and such cases have been reported to the authorities for investigation;
4. Disputes related to problems between agents and/or brokers with members;
5. Disputes of more than 6 (six) months as of the member's giving a final rejection;
6. Disputes occurring prior to the establishment of BMAI, unless such dispute is submitted to BMAI within 12 (twelve) months as of BMAI operation;
7. Disputes that have been previously settled directly between the petitioner and the member;
8. Disputes that have been or are being heard in the Court of Law.

Therefore, the intended dispute here is a dispute arising in connection with a rejection in writing by a member of insurance claim submitted by a petitioner to such member that acts as an insurer under an insurance contract, which is submitted by the petitioner to BMAI by no later than 6 (six) months as of the date of the rejection letter as stipulated in Article 1 point (3) of the Decision Letter No.001/SK-BMAI/09.2006 concerning the Handling Process of Disputes through Mediation and/or Adjudication.

#### **D. The Procedure of Dispute Resolution through BMAI**

In Law Number 30 Year 1999, the procedure of dispute resolution through mediation is set forth in Article 6 paragraph (3) which stipulates that: "in the event that a dispute or difference of opinion cannot be resolved through alternative dispute resolution, then based on written agreement of the parties, the dispute or difference of opinion shall be resolved through one or more expert advisers or through a **mediator**". However, there is no specific procedure to be taken in the mediation

process. The parties are free to decide the procedure. The important thing is the consensus of the parties from the process of (choosing) the method of mediation, of accepting or refusing the proposals brought by the mediator up to the termination of the tasks of the mediator<sup>29</sup>.

This resolution through mediation is not binding, meaning that although the parties have agreed to settle their dispute through mediation, they are not obligated to settle their dispute through mediation. If the parties fail to resolve their dispute through mediation, they are still able to refer it to a binding forum such as arbitration or court.

Based on the Decision Letter No.001/SK.BMAI/09.2006, claim dispute resolution procedure (claim for indemnity or benefit) by BMAI can be made in 2 phases. The first phase shall be made through mediation and the second phase shall be made through adjudication.

## 1. Mediation Phase

In this phase, the report of dispute submitted by a petitioner (must be made by no later than 6 (six) months as of an insurer's submitting its final rejection response to the petitioner), which is received by BMAI will be handled by the mediator. The mediator will analyze any incoming claim, so that a preliminary conclusion can be made, and will determine the direction of the resolution to be taken thereafter. If in the preliminary conclusion, the mediator does not agree with the rejection of the insurer, the mediator will immediately contact the insurer to discuss the case. This direct discussion is expected to produce a consensus of amicable and fair settlement for both parties.

Should there be no consensus reached between the mediator and the insurer, the mediator will approach the insured party and explain as well as possible the reason of the insurer's rejection and the offer that can be made by the insurer, if any.

In the event that the insured party cannot completely accept the reason for the rejection, but is willing to accept an indemnity in a **compromised** manner, the mediator will approach the insurer. If the insurer agrees, the case will be closed and the mediator must record in writing all terms of resolution as agreed by both parties. However, if not, the case will be resumed to adjudication level.

The mediator must work to settle the dispute within a reasonable time, by taking into consideration the complexity of the case<sup>30</sup>. With regard to reasonable time, according to the chairman BMAI, Frans Lamury, the cases submitted to BMAI usually can be resolved within one month and at the latest within three months, but there are also cases that still cannot be settled within six months<sup>31</sup>. The insured party is not charged with any cost whatsoever for this service.

## 2. Adjudication Phase

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<sup>29</sup>Huala Adolf, *International Trade Law* (Jakarta, 2005), page 203.

<sup>30</sup>Article 14 of the Decision Letter No.001/SK-BMAI/09.2006 concerning the Handling Process of Disputes through Mediation and/or Adjudication.

<sup>31</sup>Media Asuransi, *op.cit.*

This phase occurs if the claim dispute (claim for indemnity or benefit) cannot be settled in a compromised manner through mediation by mediator; the dispute case will then be brought to adjudication level to be decided by a court of adjudication where any hearing shall be attended by 3 Members of Panel of Adjudicator<sup>32</sup> appointed by BMAI.

Adjudication hearings are aimed at performing a review of substance on the opinion made by the mediator on a case prior to the rendering of such opinion or decision to the relevant parties. Every final decision of BMAI whether “upholding” or “rejecting” must be made based on impartiality and made through adjudication hearing.

If the dispute is decided in favor of the petitioner by the Panel of Adjudicators, the decision may include the amount of payment to be immediately made by the member in accordance with what is regarded fair by the Panel of Adjudicators of the financial damage suffered by the petitioner, and shall not include losses outside the coverage of the policy. Thereafter, the Panel of Adjudicators can, as part of the decision, give **recommendation** as deemed necessary to the member for the implementation of the decision, but this recommendation does not bind the member.

BMAI will render the **final decision** to all parties in writing, which decision shall bind the insurance company but shall not bind the insured party. Therefore, if BMAI’s adjudication decides that the decision to reject the claim by the insurance company is correct, the insured party shall be free to accept or to reject such decision.

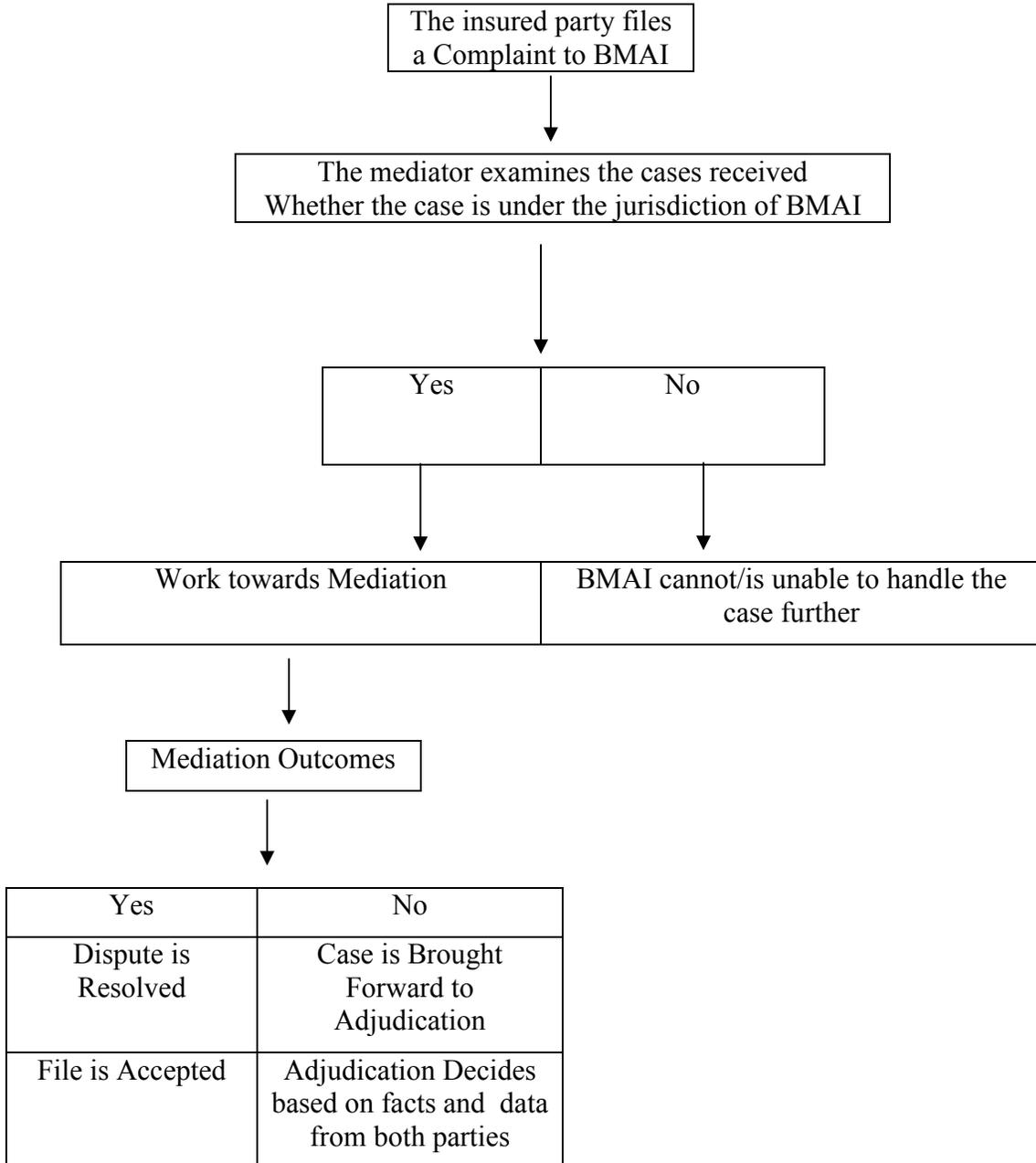
If the insured party rejects the decision of BMAI’s adjudication, the insured party shall be free to take further legal remedy in accordance with the provisions of the policy to fight for the insured party’s rights. On the contrary, if the decision taken by the adjudication obliges the company to pay, the company must execute the payment in accordance with the provisions of the policy.

Every case that has been decided by a court of adjudication cannot be reviewed. And for the phase of this service, the insured party is not charged with any fee either.

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<sup>32</sup>Adjudicator is a person meeting the qualifications as a mediator designated and appointed by the management of BMAI pursuant to BMAI Regulation (Article 1 point (7) of Decision Letter No.001/SK-BMAI/09.2006.

In brief, the Process of Insurance Dispute Resolution by BMAI can be described as follow:



Based on BMAI's data, the number of cases that have been handled by BMAI during its operation up to October 2007 is 70 cases. 40 cases have been processed, consisting of 28 life insurance cases (three of which were settled through

adjudication) and 12 general insurance cases (two of which were resolved through adjudication). Meanwhile, the rest 30 cases were not processed, because the insured parties can accept the reason for their claim rejection by the insurance companies and accept the decision of BMAI, although they were disappointed because their claims were not paid. This is usually because their agent does not understand or comprehend the offered product, because of their agent's minimum knowledge of insurance or because they buy the policy because the agent is their friend or their family. Disputes often occur because the insurance company is not liable or because the amount of the claim paid according to the customer's calculation should have been larger than the company's calculation<sup>33</sup>.

Out of the 70 cases, 20 % came from Jakarta, while 80 % came from various regions in Indonesia. This number of cases is indeed still very low for the entire of Indonesia, but at least the benefit of the undergoing dissemination can be felt already by disputing parties.

#### **E. Deed of Compromise or the Outcome of the Decision**

The decision of BMAI is NOT BINDING on the insurance consumers, but is FINAL and BINDING on the insurance companies. It means that if the insurance company is defeated, meaning that the insurance company must pay the claim, then the insurance company must pay the claim. In this case, the insurance company must comply and cannot take any legal remedy whatsoever. From such illustration, in theory, it is clear that BMAI is an independent party, so that it will be difficult to call BMAI as an instrument of insurance business actors to control their insurance consumers. On the contrary, for insurance consumers, it is their authority to voluntarily comply and execute BMAI's decision or not. Because, if not, a decision of BMAI does not bind the insurance consumer and upon the insurance consumer's dissatisfaction of BMAI's decision, the insurance consumer can reject BMAI's decision and refer back the problem to arbitration or court in accordance with the choice of the insured party and the dispute resolution clause in the policy.

#### **F. Closing**

Dispute potential that can always arise from contracting activities in the insurance business is something that cannot be prevented, but as long as insurance companies undertake their business properly, are supported by strong capital, good moral-qualified resources; then such disputes can be resolved easily. And the occurrence of such dispute does not automatically worsen the image of the insurance company in the eye of its customers. For such purpose, the existence of BMAI must continuously be socialized, so that the insured parties can regard BMAI as an alternative of dispute resolutions, and can serve as an effective mediator to resolve disputes, so that consequently, the insured parties' rights and the insured companies' reputation can be protected, all of which certainly will affect the development of the insurance industry in Indonesia.

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<sup>33</sup>Insurance Media, Insurance and Finance Business, *BMAI Resolves Most Diputes through Mediation*, Jakarta, October 2007, No.201), page 92.

## Bibliography

- Christopher W. Moore. Mediasi Lingkungan. Jakarta: Center for Environmental Law and CDR Associate, 1995.
- Gunawan Wijaya dan Ahmad Yani,. Seri Hukum Bisnis: Hukum Arbitrase. Jakarta: PT Rajagrafindo Persada. 2000 .
- Huala Adolf. Hukum Perdagangan Internasional. Jakarta: PT Raja Grafindo Persada, 2005.
- Indonesia. Undang-undang No.30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.
- . Undang-undang No.8 Tahun 1995 tentang Perlindungan Konsumen.
- . Undang-undang Nomor 37 Tahun 2004 tentang Kepailitan dan Penundaan Kewajiban Pembayaran Utang.
- Kimberlee K. Kovach. Mediation Principles and Practice .St. Paul: Publishing Co, 1994
- Media Asuransi, Bisnis Perasuransian dan Keuangan, BMAI selesaikan Mayoritas Sengketa dengan Mediasi , (Jakarta, Oktober 2007, No.201).
- Munir Fuady. Bisnis Arbitrase Nasional, Alternatif Penyelesaian Sengketa Bisnis. Bandung: PT Citra Aditya Bakti, 2000.
- Rachmadi Usman. Pilihan Penyelesaian Sengketa di Luar Pengadilan. Bandung: PT Citra Aditya Bakti, 2003.
- Ricardo Simanjuntak. Berbagai Sengketa Hukum yang Dapat Muncul dari Kontrak Asuransi serta Penyelesaiannya. Jurnal Hukum Bisnis, Volume 26 No.3 Tahun 2007.
- R. Subekti dan R. Tjitrosudibio. Kitab Undang-undang Hukum Perdata. Jakarta: PT Pradnya Paramita, 1995.
- . Kitab Undang-undang Hukum Dagang. Jakarta: PT Pradnya Paramita, 1997.
- Surat Keputusan No.031/SK-BMAI/09.2006 tentang Proses Penanganan Sengketa melalui Mediasi dan/atau Ajudikasi.

Tim Penyusun Kamus Pusat Pembinaan dan Pengembangan Bahasa. Kamus Besar Bahasa Indonesia. Jakarta: Departemen Pendidikan dan Kebudayaan, 1988.