
	<b>Gema WIRALODRA</b>
	Editor-in-Chief: Yudhi Mahmud
	 Publisher: Universitas Wiralodra

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**To cite this article:**

Zihantara, S. (2024). Dispute resolution on an insurance policy that includes an arbitration clause: a study of award 39/PDT.G/2021/PN PAL. *Gema Wiralodra*, 15(1), 444-448.

**To link to this article:**

<https://gemawiralodra.unwir.ac.id/index.php/gemawiralodra/issue/view/24>

**Published by:**

Universitas Wiralodra  
Jln. Ir. H. Juanda Km 3 Indramayu, West Java, Indonesia

## Dispute resolution on an insurance policy that includes an arbitration clause: a study of award 39/PDT.G/2021/PN PAL

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### Abstract

This study aims to determine absolute competence or authority to adjudicate the District Court in insurance disputes with insurance policies that include dispute resolution clauses through arbitration. The method used in this study is the non-doctrinal method. The data/subject matter in this study was obtained directly from respondents through field research, namely architects who had created a work. That an insurance policy that includes an arbitration clause should be resolved through the Arbitration Board by the policy and this should nullify the authority of the district court to adjudicate a dispute arising as a result of the insurance policy. The clause in the settlement has a function for the company to be able to resolve a problem in private to maintain the good name of the company and resolve the problem in a shorter time when compared to the District Court, because of this, settlement through arbitration is the choice of insurance companies, but in practice Often lawsuits against insurance companies as guarantors agreed with the insurance policy are submitted to the District Court, resulting in discrepancies in the procedure for resolving insurance disputes.

**Keywords:** Authority to adjudicate, Arbitration Dispute, Insurance Disputes

### 1. Introduction

The increasingly progressive economic and industrial development has implications that are also increasingly complex for the growth of the insurance business in Indonesia. Huda & Hakim (2006), the growth of the insurance business is certainly inseparable from the role of insurance which also supports the development and economic growth of the community. Insurance or coverage as a legal symptom in Indonesia, both in its sense and in its form seen today, comes from western countries. It was the Netherlands that imported insurance as a form of law (*rechtsfiguur*) in Indonesia by promulgating the Civil Code (hereinafter referred to as KUHPdt) (Prakoso, 2004).

Insurance is a legal term used in legislation. The term insurance comes from the word "insurance" which means coverage or protection of an object from the threat of harm that causes loss (Prakoso, 2004). Insurance is one type of special agreement regulated in the Commercial Law Code (hereinafter referred to as KUHD) as an agreement, then the provisions of the legal terms of an agreement in the KUHPdt apply. Based on the provisions of Article 257 paragraph (1) of the KUHD, the insurance agreement occurs immediately after an agreement is reached between the insured and the insurer so that reciprocal rights and obligations arise from that moment on, even before the policy is signed. Article 255 of the KUHD states that insurance must be made in writing in the form of a deed called a policy where according to Article 258 paragraph (1) of the KUHD the policy is the only written evidence to prove that insurance has occurred.

Broadly speaking, the substance of the insurance policy consists of a description of the object guaranteed, the name and address of the insurer and insured, the validity period of the policy, risks or hazards guaranteed and excluded, general terms or conditions and the last is the way of resolving disputes or disputes in the event of a claim which is usually called an arbitration clause or dispute resolution.

The arbitration clause in the insurance policy contains provisions that if there is a dispute between the insurer and the insured, the parties agree to seek amicable settlement, but if a deliberative settlement is not reached, the parties agree to resolve the dispute through

arbitration. Arbitration is a civil agreement in which the parties agree to resolve disputes that occur between them that may arise in the future to be decided by a third person, or dispute resolution by a person or several referees (arbitrators) jointly appointed by the litigant by not being resolved through the court but by deliberation by appointing a third party, which is set forth in one part of the contract.

As mentioned earlier, insurance institutions were brought to Indonesia during the Dutch colonial era so that insurance policies that until now issued by insurance companies in Indonesia come from the Netherlands, England or the United States, although now there are several insurance policies made by the Indonesian General Insurance Association (hereinafter referred to as AAUI) or by Indonesian insurance companies. However, the structure and main contents of the insurance policy contain many similarities with insurance policies in the countries mentioned earlier. All insurance policies Simanjutak (2006) issued by AAUI contain dispute resolution clauses through arbitration, therefore in this writing will be further studied regarding the inclusion of arbitration clauses in insurance policies and their relation to the insurance dispute resolution process taken by the parties.

This writing will discuss the arbitrase clause in the insurance policy of PT. INDONESIAN CREDIT INSURANCE and the dispute resolution process taken by the insurer and the insured by linking it to Law Number 2 of 1992 concerning Insurance Business, State Gazette of the Republic of Indonesia of 1992 Number 13, Supplement to the State Gazette of the Republic of Indonesia Number 3467 (hereinafter referred to as the Insurance Law) and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, State Gazette of the Republic of Indonesia of 1999 Number 138, Supplement to the State Gazette of the Republic of Indonesia Number 3872 (hereinafter referred to as the Arbitration Law).

That the background of the author is PT. Asuransi Kredit Indonesia (ASKRINDO) being the topic of this writing is the decision of the Lawsuit against ASKRINDO at the Palu State Court where the ASKRINDO Policy contains the Arbitration Clause, thus causing conflicts with the provisions of the arbitration law. That the difference in the application of arbitration clauses in the dispute resolution process is the background for the author to further examine the competence of adjudicating from the court in resolving insurance claim disputes in insurance policies that include arbitration clauses and relate them to statutory provisions, especially the Insurance Law and the Arbitration Law and how they are applied in court.

## 2. Method

The method used in this study is the Non-Doctrinal method. Non-doctrinal research is legal research on the enactment or implementation of normative legal provisions in action on any particular legal event that occurs in society. Muhammad (2004), Non-doctrinal research is field research (research on primary data), which is a study examining legal regulations which are then combined with data and behavior that live in the midst of society. The data / subject matter in this study was obtained directly from respondents through field research, namely architects who had created a work. As a scientific activity, this research is not based on the examination of one legal discipline alone, but is based on perspectives from other relevant disciplines. Although the research conducted uses the perspective of other disciplines, this research is still legal research, because the perspective of other sciences to be used is only a tool in the implementation of this research. In data collection techniques, the author uses interview methods (Riduwan, 2004) with business actors (informants), legal practitioners, insurance experts as primary data to support secondary data or literature research (library research). Use of these legal library materials

### 3. Results and Discussion

#### Competence of the Court in adjudicating insurance claim disputes over insurance policies in which there is an arbitration clause

##### Competence of the Court

In the dispute resolution procedure in court, two competencies are known, namely Absolute and Relative Competence, absolute competence explains the object, material and subject matter of the case dispute and what court is authorized to adjudicate the case such as the Tax Court is authorized to handle Cases with the subject matter of Taxation and the Commercial Court is authorized to handle disputes over Suspension of Debt Payment Obligations and also Bankruptcy, then Absolute Competence explains which court is authorized based on the jurisdiction and legal position of the defendant such as the defendant as a company domiciled in South Jakarta, then the court authorized to adjudicate is the South Jakarta State Court.

Absolute and relative competence is used in every case that enters the court to check whether the Judge of the State Court has the authority to try the case. However, in practice the place of dispute resolution can be chosen by the parties through an agreement, where the agreement includes a Clause stating the place to resolve the dispute between both parties, as in the case above, the parties through the agreement or in this case in the form of an insurance policy have included a dispute settlement clause to be resolved at the Indonesian National Arbitration Board (BANI).

Based on Articles 3 and 11 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states:

*Article 3: "State courts are not authorized to adjudicate disputes of parties who have entered into an arbitration agreement".*

*Article 11 paragraph 1: "The existence of a written arbitration agreement negates the right of parties to complain about the settlement of disputes or differences of opinion contained in the agreement to the Negri Court".*

*Paragraph 2: "the State court shall refuse and shall not intervene in a dispute resolution that has been determined by arbitration, except in certain cases provided for in this Law".*

From the above article in Law 30 of 1999 it is explained that when there is an Arbitration Clause in an agreement, the State Court is not authorized to adjudicate the case, unless there are certain matters as written in Article 70 of Law Number 30 of 1999:

*"Against the arbitrase award the parties may apply for annulment if the award allegedly contains the following elements:*

- a. Letters or documents submitted in the examination, after the judgment has been rendered, are admitted to be false or declared to be false;*
- b. After the verdict is taken, a decisive document is found, which is hidden by the opposite party or;*
- c. The decision is taken from the result of a ruse committed by one of the parties in the examination of the dispute."*

It is explained in the above article the reason for the State Court to intervene in a case containing an Arbitration Clause only when the Arbitration Award is submitted for Annulment on condition of annulment as written above.

For example, the form of the Arbitrage Clause in the agreement; "All disputes arising out of this agreement, shall be resolved and decided by the Indonesian National Arbitration Board (BANI) according to BANI's rules of arbitration procedure, whose decisions are binding on both parties to the dispute, as decisions in the first and last instance." This clause clearly specifies the way disputes are resolved through BANI and it is clearly written that the settlement at BANI has a *final and binding nature*,

### **Insurance Policy as an Agreement**

In the Commercial Law Code, Insurance is one type of special agreement, so the provisions of the legal terms of an agreement in the Civil Code also apply to insurance agreements. Because the Insurance agreement is a special agreement in addition to the provisions of the Civil Code regarding agreements, special conditions also apply as stipulated in the KUHD.

Article 246 of the Criminal Code states: "*Insurance or coverage is an agreement, by which an insurer binds himself to the insured, by receiving a premium, to compensate him for a loss, damage or loss of expected profits that he may suffer due to an indefinite event.*" According to the article above, it is explained that Insurance is an agreement between two parties, namely the insurer and the insured, thus a policy can be considered as an agreement of insurance products and can also include an Arbitration clause as another agreement.

### **Dispute Resolution Process on Insurance Policy which includes Clause Arbitrae in Judgment 39/PDT. G/2021/PN PAL.**

#### **Dispute Resolution Process on Insurance Claims**

Basically, insurance disputes occur if the insurance company rejects the claim submitted by the insured, either in part or in whole. Dispute resolution through alternative dispute resolution institutions such as negotiation, mediation, conciliation and arbitrasae can be a way to resolve insurance disputes (Melenko, 2020). Which form of settlement will be taken depends on the dispute resolution clause contained and agreed upon in the insurance policy. In general, insurance policies regulate / contain clauses for dispute resolution through arbitration (Simanjuntak, 2007).

In Law Number 14 of 1970 concerning the Main Provisions of Judicial Power where in the explanation of Article 3 of this Law it is stated "*settlement of cases outside the court, on the basis of peace or through wasi (arbitration), is still allowed*" in addition to Article 14 paragraph 2 states "*the provisions in paragraph 1 do not rule out the possibility for peaceful settlement of civil cases*". Although the practice of alternative dispute resolution (APS) does not go through an official judicial body that has coercive authority, it is a way of resolving disputes that is recognized and carried out based on business ethics.

### **Dispute Resolution Arrangements on Construction All Risk (CAR) Insurance Policy of PT. Indonesia Credit Insurance (Persero)**

In policy No.143090119000018 dated March 21, 2019 on the Tawaeli-Nupabomba-kebon-Kopi-Toboli III (MYC) Slope Reconstruction and Handling work package, in the event that General Conditions Number 7 states "*if a discrepancy arises as to the amount payable under this Policy (while liability has been acknowledged), such discrepancy shall not be referred to the decision of an arbitrator appointed in writing by the disputing party, or if unable to refer to the sole arbitrator the decision of two Arbitrators, one appointed in writing by each party within one calendar month after being asked in writing to do so by either party, or in the event that the arbitrators disagree, of an arbitrator appointed in writing by the arbitrators before the latter enters into the reference. The referee sits together with the arbitrators and*

*presides over their meetings. Decisions made by arbitrators and presided over their meetings. The decision made becomes a condition of precedent for any right to act against the insurer".*

With the explanation of the provisions in the Insurance Policy agreement above, that the authority to resolve the dispute or claim is an Arbitration appointed by both parties to resolve the dispute or claim, and not the Palu State Court which has the authority to resolve disputes on the insurance policy mentioned above.

### **Legal Effects of Resolving Disputes on Insurance Policies That Contain Arbitration Clauses Decided in State Courts**

Article 3 of the Arbitration Law states that "the State Court is not authorized to adjudicate disputes between parties who are bound by an arbitration agreement". And in Article 11 paragraph (2) it is also stated "The State Court shall refuse and shall not intervene in a dispute resolution stipulated in this Law". Therefore, on the basis of Article 3 juncto Article 11 paragraph (2), it is explained that the legal consequences arising from the dispute contained in the arbitrase clause in it must be decided that the judge rejects the dispute because the State Court is not authorized to do so because the authority to resolve the dispute is the Arbitration Body. However, in Decision No. 39/PDT. G/2021/PN PAL, the judge decided and resolved the case by stating that the case was a Default and the insurance company must compensate the insured.

### **4. Conclusion**

The results showed that the Court does not have the competence to adjudicate insurance claim disputes over insurance policies in which there is an arbitration clause, because the clause is an agreement of the parties as outlined in an agreement in the form of an Insurance Policy, then according to the principle of *Pacta sunt servanda* an agreement applies as a law to the parties who make it as long as the agreement concerned does not violate the terms of validity of the agreement as stipulated in Article 1320 of the Civil Code. As a consequence of the agreement, the State Court is not authorized to adjudicate the case under Articles 2, 3, and Article 11 of the Arbitration Law

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