Alternative Insitutions on Dispute Settlement For Financial Services Sector (LAPS SJK) in Banking Disputes

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Abstract

A dispute is a problem submitted by the Customer or Customer Representative to the bank mediation organizer, after going through the complaint resolution process by the Bank. When the customer feels that the problem is not resolved through Complaint to the Bank, a dispute is born here. Disputes between the Bank and the Customer are inevitable because of the legal relationship between the two. Dispute resolution solutions are carried out through litigation or court and non-litigation channels. One of the best steps in resolving disputes between banks and customers is through Mediation which is facilitated by the Alternative Institutions on Dispute Settlement For Financial Services Sector/Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK). The purpose of writing this article is to examine the optimization of the role of mediation for banking disputes. The settlement process at LAPS for the Financial Services Sector is confidential. The term confidential here means that the announcement is not announced. It prioritizes a win-win solution. Therefore it is more comfortable for the parties. Ultimately there will also be able to maintain consumer confidence in the financial services sector.
A. Introduction

In the banking business, consumers are called king. The bank is obliged to fulfill the rights of its customers so that customers can grant trust to the bank since the customer will utilize the items from the bank. Trust within within the banking business is the most thing that must be considered since here the bank's capacities to spare cash from the public, the public will not select a bank that cannot fulfill the trust of its customers. Banks are utilized for different purposes related to finance, the Bank carries out its work, it is following to various financial administrations concurring to its improvement, such as regulating the money in circulation, giving credits to customers, checking the cash in circulation, and indeed entrusting it to store resources to finance. business embraced by a company.

National development in this country cannot be isolated from the obstructions of the banking segment which plays an active part within the primary function of banks as financial intermediaries. Subsequently, in this economic life, the banking segment plays an vital part in interfacing parties who have more reserves (excess of the fund) and parties that have deficiently funds and require extra subsidizing (lack of funds).

Banks must be smart in drawing in people to gotten to be customers at their banks, there are a few activities or steps to win people's hearts which are ordinarily carried out by banks such as holding lucky draws, advertising items that are given prizes, bundling notices as imaginatively as possible, offering flowers flowers that tempt the public. as well as other appealing expenses. Within the community, there are funds collected by banks, such as exchanges

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utilizing credit and bank facilities that can be utilized for the facilities such as ATMs, credit cards, securities, and so on.

From what has been explained above it can be concluded that the bank contains a position to be an institution that is closely related to the wider community and from that relationship, also produces a complementary relationship that is appropriate for the capacities of the following banking:

1. Raising funds to following to the functions.
2. Distribution of reserves collected by the bank
3. Bank assistance in traffic services for money transfers, collections, tourist checks, credit cards, and other services.

The number of activities or businesses carried out by the Bank makes people often refer to banks as "supermarkets" since within the bank, there are numerous products advertised, such as when we shop at grocery stores. In any case, in practice, the banking business cannot be isolated from risk. Disputes between the Bank and the Customer are a necessity. This dispute is the risk of creating a legal relationship between the bank and the customer, the existence of a legal relationship has the risk of opening the possibility of a dispute and even a dispute between the two parties.

One of the most common banking products owned by customers is a credit card, this opens up the risk of disputes between the bank and its customers even greater. Disputes that occur between banks and customers regarding the provision of credit originate from the many realities that occur that customers can also cause conflicts between banks and customers.

In this matter, there are still injustices in customer protection, there is no good place for customer protection in the banking system in Indonesia. The reality that occurs in society is that bank customers often become the most disadvantaged parties if there are cases related to banking. Beginning from giving data that is vague and deceiving customers, interest rates, accounts that are abruptly debited without the information of the customers who have the

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account, services from bank employees who don't fulfill their customers and other issues.\textsuperscript{11}

Settlement of disputes either through court or arbitration is formal, compelling, and considers what kind of issues are behind this dispute and other fundamental rights. In choosing a case, the methods that must be carried out by the disputing parties must be based on strict arrangements and must not disregard to pay consideration to the rights and obligations of these parties.\textsuperscript{12}

It is distinctive if the dispute is settled by alternative determination which is informal and deliberate, forward-looking, maintains cooperation and is based on interests.

Subsequently, there is a regulation based on arrangements so that banks can decrease complaints from customers with respect to their disappointment with the bank, the regulation issued by the Central Bank in Indonesia, specifically Bank Indonesia, is Bank Indonesia Regulation Number 7/7/PBI/2005 Concerning Complaint Resolution Customer. This policy comes with the trust that customers can pass on all things that they think are unsuitable related to banking services, and after that, the assignment of Bank Indonesia is to provide rights that ought to be gotten by customers that customers already did not get. At that point, Bank Indonesia took the initiative to issue Bank Indonesia Regulation Number 8/5/PBI/2006 concerning Banking Intercession.\textsuperscript{13}

Disputes that gotten to be issued by banks and customers are exceptionally vital, subsequently Bank Indonesia includes efforts to secure customers as one of a few pillars within the Indonesian Banking Architecture (API) put forward by the Governor of Bank Indonesia on January 9, 2004, with this presence. It is trusted that it will make it simpler for the disputing parties so that the examination can be carried out rapidly, essentially and at low cost. So, this dispute can be settled based on the strategies that have been already determined.\textsuperscript{14}

\textsuperscript{11} Dananjaya and Sudiarawan, “Karakteristik Mediasi Perbankan Sebagai Alternatif Penyelesaian Sengketa Perbankan Indonesia (Analisis Aspek Keadilan, Kepastian Hukum, Dan Kemanfaatan).”


One way to resolve this debate is through a conciliation process. Disputes that happen between the bank and the customer can be settled by negotiation between the two debating parties.

In arrange to resolve a legitimate dispute that happens between a bank and a customer, in case after going through a complaint at the bank the parties do not discover a settlement point, the parties can utilize the banking conciliation channel. Subsequently, banking intercession can be compared to an institution at the level of appeal between the bank and the customer. In addition to settling bank and customer disputes, mediation is here to preserve a great relationship between the bank and the customer so that after the dispute is settled by negotiation, the relationship between the bank and the customer can still be well established. Typically the reason why numerous parties need to resolve their debate through negotiation.

Mediation may be a handle of understanding issues with the point of accomplishing peace to the disputing parties, in this case the disputing parties, specifically the bank and the customer. The mediation prepare employments a third party who does not take sides with one of the parties who is the mediator. The mediator is an individual who is asked by the disputing parties to facilitate the settlement of the parties' disputes. The agreement generated by the two disputing parties forms the basis of the outcome of the mediation process.

Normative legal research (normative law study) uses normative case studies in the form of basic legal behavior products. The study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. Based on the explanation above, the author decided to use normative legal research methods to research and write this discussion as a legal research method. This article is based on the rules of the Financial Services Authority Regulation No. 61 /POJK.07/2020 Concerning Alternative Insitutions on Dispute Settlement For Financial Services Sector and analysis of its implementation in alternative dispute resolution.

The issue that will be examined is how to optimize the role of mediation by the Bank? Thus, the purpose of writing this article is to examine the optimization of the role of mediation by the Bank in the event of a legal dispute

and also to further socialize to the public that within the Bank’s structure there is an institution in charge of providing mediation between the customer and the bank.

A. Discussion
1. The Process of Disputes Between the Bank and the Customer in a Legal Relationship between the Two According to the Banking Law System in Indonesia

The correct form to define a dispute could be a circumstance in which a few parties are commonly disadvantaged by one another. The disappointment is passed on to the other party by one of the parties and in case the party passed on the disappointment feels unacceptable and does not react to the other party, and after that there is a difference between them, from there we are able to conclude that these parties have disputed.18 In any case, when viewed from the viewpoint of contract law, the dispute here is when one party and another party disputes since the understanding they entered into a contract has been violated, whether it could be a full violation or a fractional violation. The term that is frequently specified when a dispute happens in a legitimate relationship is default.19

This default can happen in case the indebted person: (1) If it does not meet the accomplishment at all; (2) Not completely satisfying the accomplishments; (3) being late in fulfilling achievements; (4) Misrepresented achievements.20 Since banking is one of the exercises that support economic improvement, uncommon consideration must be paid to how this dispute settlement ought to be carried out so that banking activities can run regularly again.

In running a business, the bank incorporates a duty, namely to gather funds from the public and after that convey these funds to the community again. In addition to collecting funds from the public for the community, the bank also capacities to create payments in other financial services. The main work of banking is called the intermediation work,21 collecting funds from the public and channeling them viably and effectively to the real sectors to drive the economy.

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19 Badriyah Harun, Penyelesaian Sengketa Kredit Bermasalah (Yogyakarta: Pustaka Yustisia, 2010).
20 “Kitab Undang-Undang Hukum Perdata” (N.D.).
improvement and stability of a country's economy. In this case, the bank collects funds from the public based on the rule of trust from the public.

Trust is the fundamental establishment in connection to the bank as a fundraising institution for the community. The community is willing to save the funds they have within the bank since there's an fundamental belief since then the community will feel secure. With the trust from the public, the bank ought to be able to be consistent in keeping up the trust given by the public, so that the public is still willing to spare their funds within the bank and the bank itself can channel these funds to the public again and this commonly advantageous relationship happens.

The bank continuously tries to pull in more customers to be able to create understandings with the bank. The meaning of an understanding between a bank and a customer here is, among other things, a savings and loan agreement and a credit agreement, these two agreements are authoritative agreements for the parties so that a legitimate relationship can emerge between the bank and the customer. In any case, each activity must have its risks as well as this legitimate relationship.22

The legitimate relationship that happens will never be distant from the opportunity for a dispute to happen since one of the parties, either a bank or a customer, is in default. Based on the author's observations, banks and customers often experience disputes because the bank is deemed not give satisfactory data around the products or services advertised by the bank. Some of the time customers themselves still need an understanding of banking exercises or products.

This imbalance in the relationship causes frequent disputes. Another cause that can lead to disputes between a bank and a customer is the customer's unawareness or lack of attention to what their obligations are. Usually, when becoming a customer of a bank that operates this financial services business, the customer knows what rights they should be given. 23 Of course, that doesn't mean that not all customers know it. A few customers also know exactly what obligations they have to fulfill when they become customers. However, customers who are unaware of these obligations usually suffer specific damage due to their own negligence and leading to disputes.

For example, if you are using a banking product such as an ATM or credit card and the ATM or credit card is being used by someone else without your

22 Amelia Kandisa2, “Penyelesaian Sengketa Perbankan Melalui Mediasi Perbankan.”
knowledge, the ATM or credit card owner will be asked to check your balance. Notice that your balance is decreasing. ATM or billing amount. Anything that must be paid for the use of a credit card and leads to complaints to financial service providers or banks. These are in fact the negligence of customers who do not properly protect their privacy, so such things can be leaked. But most of them will blame banks as financial players.

Due to the bank's obligation to always serve its customers, banks must respond to customer complaints. This is where the dispute between the bank and the customer begins, and the bank only sees the evidence recorded by the machine that there was actually a transaction from the customer. Credit cards or ATMs and customers deny that the transaction was not theirs and was done without their knowledge.24

First of all, the bank and the customer will resolve this problem in a friendly manner, however, if in the end they do not find a mutually beneficial agreement between the two parties to make peace, the next path is to resolve disputes both in litigation and non-litigation, depending on the parties' choice. Not all of these disputes originate from customers, the bank as a business actor can also cause problems such as transfer errors that lead to crimes25 which is being discussed. Therefore, customers and banks must have good communication, banks are obliged to provide information as clearly as possible to customers and be careful in carrying out daily banking tasks and customers must also carry out their obligations as well as possible.

2. Implementation of Banking Mediation in the Context of Resolving Banking Disputes

Customers are not continuously fulfilled with the settlement of complaints made at the bank.26 Therefore, the solution you need to find is to use bank mediation to resolve this dispute easily, cheaply and quickly. Efforts to reduce complaints from Bank Indonesia's customers as the central bank of Indonesia is to issue regulations, which are used as the legal basis for customers who are dissatisfied with banking services. Based on Bank Indonesia Regulation No. 7/7 / PBI / 2005 on Customer Complaint Resolution, this policy was created with the expectation that customers will be able to file complaints about inadequate banking transactions. In addition, Bank Indonesia has taken the

24 Ramdhan And Sumiyati, “Perlindungan Hukum Terhadap Nasabah Korban Skimming Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999.”
initiative to issue Bank Indonesia Regulation No. 8/5 / PBI / 2006 on Banking Brokerage.

Bank arbitration is a feature provided to banks and customers to resolve disputes. If you are unable to properly resolve the complaint filed, you can refer the dispute to bank mediation. Bank of Indonesia Rule Number: 8/5 / PBI / 2006, Article 1 (5), mediators involve mediators to assist the parties to an agreement in the form of a voluntary settlement of all disputes. It states that it is a dispute resolution procedure.

Banking dispute mediator is an independent banking mediation institution established by a banking association (Bank Indonesia, 2008). Based on the Financial Services Authority Regulation No. 61 /POJK.07/2020 Concerning Alternative Institutions on Dispute Settlement For Financial Services Sector, Alternative Institutions on Dispute Settlement For Financial Services Sector, hereinafter referred to as LAPS of the Financial Services Sector (SJK) is an institution that resolves disputes in the financial services sector outside the court, prior to its formation. LAPS SJK, the banking dispute settlement institution is the Indonesian Banking Dispute Resolution Alternative Institute (LAPSPI).

LAPS of the Financial Services Sector can handle Disputes with the following criteria: a) Complaints have been made by the Financial Services Business Actors (PUJK) however, are rejected by the Consumers or Consumers have not received a response to complaints as stipulated in the Financial Services Authority Regulation regarding consumer complaint services in the service sector finance; b) The proposed dispute is not a dispute in process or has been decided by a judiciary, arbitration or other alternative dispute resolution institution; and c) Disputes are civil in nature.27

The settlement process at LAPS for the Financial Services Sector is confidential, confidential here means that the announcement is not announced and prioritizes a win-win solution, so it is more comfortable for the parties and able to maintain consumer confidence in the financial services sector. In addition, dispute resolution through LAPS in the Financial Services Sector is faster, cheaper and results in objective, relevant and fair decisions or agreements.28

The causes of bank-customer disputes related to banking transactions, which are the function of the arbitration committee, are: (Bank Indonesia,

28 Otoritas Jasa Keuangan (OJK).
2008) a) Remittance failure, b) Debiting customer account, c) Especially in rough and inaccurate handling by banks d) Invoicing and e) Security interest/guarantee claims error.

By mediating, the parties understand each other during the process, hear the other's reasons, and think that this meeting between the parties is aimed at relieving feelings of anger and hatred between them, a calm head. You can settle a dispute with two. Mediation opens the eyes of both parties on their weaknesses and strengths. This is expected to allow both parties to understand each other and open their views on the dispute, leading to a good agreement between the two parties.

The distinction between mediation and legal proceedings is usually an effort made not only to achieve justice but also in relation to the relationships that can survive after that process. In fact, there are several ways to resolve a bank dispute, including negotiation, mediation, mediation, arbitration, and proceedings. However, all these efforts are not easy. This is especially true for small clients and micro-enterprises who cannot easily carry out arbitration and proceedings because they require a lot of time and money. Therefore, trying to resolve a simpler, easier, and relatively quick method of arbitration will help the parties to the dispute to resolve the dispute.

The advantages of the bank arbitration process are: 1) The parties are in the same and equal position and have the opportunity to participate directly in the mediation process. 2) The appointed mediator is an independent person with knowledge and experience in the field. 4) The parties to the dispute will decide for themselves how to resolve this dispute. The mediator is just an intermediary. 5) The implementation of the result of the mediation agreement by the parties is voluntary without any coercion by either party. 6) Affordable cost compared to court dispute resolution. 7) The duration of the mediation process is relatively shorter than the duration of the court's dispute resolution.

3. Conclusion

Banks and customers often conflict because banks are believed to not provide sufficient information about their products and services. In addition, customers themselves still lack an understanding of banking transactions and

30 Kholid, “Penyelesaian Sengketa Perbankan Pasca Keluarnya Undang-Undang Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan.”
products. This imbalance in relationships leads to frequent quarrels. Another cause that can lead to disputes between banks and customers is ignorance of customer obligations.

The use of mediation as an alternative to bank and customer dispute resolution is considered to be easier and relatively cheaper. In a dispute between a bank and a customer, the customer is often helpless when having to deal with the bank in court and gives up only in the dispute with the bank. A bank arbitration committee has been set up as a dispute resolution committee to protect the rights of customers. Resolving bank disputes through bank mediation is very beneficial to small customers because the process is simple, cheap, and quick. Banks are expected to continue to rationalize mediation in customer disputes, given the many benefits achieved.

References


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