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The Use of Mediation as an Alternative Dispute Resolution in the Settlement of Banking Disputes

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ABSTRACT

Banking dispute settlement must be settled first by the Financial Services Business actors (Consumer Complaint division that must be owned by every Financial Services actors including banks) and if an agreement is not reached then it can be resolved through Alternative Dispute Resolution institutions that are not only mediation but also adjudication and arbitration that must be established by the Banking Association. The research results of Alternative Dispute Resolution institutions of the banking sector should also have dispute resolution in the form of mediation, adjudication, and arbitration. Dispute resolution mechanism in the form of mediation applying the principles of accessibility, idenpendensi, fairness, and efficiency and effectiveness, a series of customer protection systems will increase customer confidence in the Bank and bring a positive impact on the development of the banking industry in realizing a financial system that grows continuously and stably. Settlement of disputes outside the court before and after, in Article 2 POJK Number 1 / POJK.07/2014 on Alternative Dispute Resolution institutions in the Financial Services Sector. Conducted through LAPSPI as an alternative dispute resolution institution in the banking sector registered in the LAPS list set by OJK.

Keywords: Alternative Dispute Resolution, Banking Dispute, Financial Services Authority

INTRODUCTION

Banking is a service business that plays a very important role in supporting the development of a nation, where banking functions as an intermediary institution (intermediation), namely collecting funds from the community, and then channeling these funds back through the provision of facilities to people who need them. By giving credit means helping people in improving their economic lives.

Economic development in Indonesia which has the main function as a collector and distributor of public funds as stipulated in Article 3 of Law No. 10 of 1998 concerning banking. Banking is one of the institutions that have an important and very strategic role in various fields, especially in the field of financial, economic activities in people's lives whose purpose is to meet one's personal needs. The meaning and role of banking can be seen from the understanding of the bank itself, which is a business entity that collects funds from the community in the form of deposits and channels them to the community in the form of credit and or other forms in order to improve the standard of living of the people. Banking is a support for the smooth payment system, the implementation of monetary policy and the achievement of financial system stability. People relate to banking institutions because of trust, as well as banking institutions to the community. People believe that banks will provide benefits to their customers both in the form of material such as interest and

non-material such as security for valuables (funds) deposited or stored in the bank. On the other hand, banks also feel confident and believe that their customers come from among those who have a good reputation and credibility.

The banking sector in the life of a country is an agent of development (agent of development), because the bank is a financial institution that functions as a financial intermediary institution (financial intermediary institution) which means that the bank is an institution that collects funds from the community in the form of deposits and distributes them back to the community in the form of credit or financing. In addition, banking is also an agent of trust (agent of trust) considering the existence of one of the principles of bank management, namely the fiduciary principle, so that banks in providing loans in the form of credit are always guided by the prudential banking principle set forth in Article 29 paragraph (2) and 3 of the law- Banking law, which is basically in the form of various provisions necessary to ensure the survival and healthy management of banks so as to maintain public trust and carry out its function as an intermediary institution and payment system services for the economy.

Banking in practice has been resolving disputes mostly using litigation processes than non-litigation processes. This can be seen from the agreements made between banks and customers that do not include classes such as arbitration, mediation, and so forth as set forth in Law Number 30 of 1999 on arbitration and Alternative Dispute Resolution. Dispute resolution, whether through court or arbitration is formal, coercive, looking at the issue backwards by paying attention to the nature of the dispute and what the rights are based on. Law No. 30 of 1999 on arbitration and Alternative Dispute Resolution, which provides various alternatives in resolving disputes outside the court quickly, cheaply and simply. The dispute resolution Model referred to in the law is the model of Arbitration, consultation, mediation and conciliation or expert assessment. With these models, it is expected that various disputes that occur can be resolved with a win-win solution, including in banking disputes.

The parties resolve their disputes when using the litigation route through various termination procedures based on strict provisions and the parties ' legal rights and obligations. In contrast, Alternative Dispute Resolution (non-litigation) is informal, voluntary, forward-looking, cooperative and interest-based. Taking into account the above, Alternative Dispute Resolution is needed as a follow-up effort to resolve customer complaints, which makes it easier for customers. Based on the description above, the author is interested in discussing the alternative settlement of customer disputes and the ideal Bank and fairness in the regulations governing the settlement of banking disputes.

LITERATURE REVIEW

Dispute

A dispute is a condition in which there is a party that feels aggrieved by another party, which in turn conveys this dissatisfaction to the second party. When there is a difference of opinion, it is called a dispute. In the context of law, especially contract law, disputes are meant. In the context of law, especially contract law, what is meant by a dispute is a dispute that occurs as outlined in a contract, either in part or in whole. In other words, there has been a wanprestasis by the parties or one of the parties.

A dispute is a problem that occurs between one party and another party in the agreement due to an act of breaking a promise or interpretation. The same is also conveyed by Takdir Rahmadi, which means that conflict or dispute is a situation and condition in which people experience disputes that are of a nature or disputes that exist only in their perception.

In resolving disputes, which is done through the court is called litigation. Where litigation is an attempt to resolve various legal cases through the court. So both parties to the dispute must take part in the

trial, which is attended by the prosecutor, judge, minutes, as well as the Registrar. A judge has the power and authority to decide what happens. Because the procedure in court has a formal nature and has a technique to decide a case by producing a proper agreement and both parties mutually accept the decision that has been determined by the judge.

Banking Mediation And Mediation

Mediation comes from English, "mediation", or mediation, which is dispute resolution involving third parties as mediators or dispute resolution by mediating. Christopher W. Moore argued that mediation is intervention in a dispute by a third party that is acceptable to the disputing party, is not part of both parties and is neutral. These third parties do not have the authority to make decisions. He is in charge of helping the warring parties to voluntarily come to an agreement accepted by each party in a dispute.

According to the formulation of Article 6 paragraph (3) of Law No. 30 of 1999 also says that "by written agreement of the parties" disputes or disagreements are resolved through the assistance of "one or more expert advisors" or through mediators".

Thus, in principle, mediation is a way of resolving disputes outside the court through negotiations involving third parties who are neutral (non-intervention) and impartial (impartial) and accepted by the parties to the dispute. The third party is called a mediator or mediator whose job is to help the parties to the dispute in solving their problems, but does not have the authority to make decisions. With mediation, it is expected to reach a common point in resolving the problems faced by the parties, which will then be set forth as a collective agreement. Decision - making is not in the hands of the mediator, but in the hands of the parties to the dispute. With regard to the place of mediation, the parties can determine for themselves and choose where they want this mediation to be held. Mediation can be held anywhere in the world.

Banking world has a very important role for society. The role is as a depositor and distributor of funds for the community. A bank must have a standard system for services performed to its customers. However, it is possible that the services provided by banks to their customers do not provide satisfactory results for their customers so that customers often feel disadvantaged. Customers often become helpless when they have to deal with the bank in court and can only resign if they have a dispute with the bank. Customers who have disputes with the bank related to banking activities or transactions can be resolved out of court.

Banking mediation as an alternative to banking dispute resolution is a simple, cheap, and fast way to resolve problems that occur between customers and banks. In addition, the result of mediation, which is an agreement between the customer and the bank, is seen as an effective form of problem solving because the interests of the customer and the bank's reputation can be maintained.

MATERIAL AND METHODS

The legal research method applied by the author in this scientific work is the normative legal research method (legal research). Normative legal research itself is a study that aims to examine the rules or norms. The approach used in the research in this scientific paper is the approach of legislation (statue approach) and conceptual approach (conceptual approach).

RESULTS AND DISCUSSION

Alternative Banking Dispute Resolution Before And After The Establishment Of The Financial Services Authority

Consumers in banking services commonly known as customers. Customers in the context of Law No. 10 on amendments to Law No. 7 of 1992 on banking are divided into two types, namely Depositary customers and debtor Customers.

Depositary customers are customers who place their funds in the bank in the form of deposits based on the bank's agreement with the customer concerned, while debtor Customers are customers who obtain credit or financing facilities based on sharia principles or equated with it based on the agreement with the customer concerned.

Banking as one of the financial services industry and needed a dispute resolution that is simple, fast and cheap. Alternative Dispute Resolution in Indonesia is regulated in Law No. 30 of 1999 concerning arbitration and Alternative Dispute Resolution. Article 1 Number 10 of the law states that alternative dispute resolution is the institution of dispute resolution or dissent through the agreed procedure of the parties, namely dispute resolution outside the court by way of consultation, negotiation, mediation, conciliation or expert assessment.

Banking in the implementation of its business activities often haknasabah can not be implemented properly, causing friction between the customer and the bank as shown by the emergence of pengaduannasabah. This customer complaint if it cannot be resolved properly by the bank has the potential to become a dispute or dispute that in the end will be detrimental to the customer and / or the bank itself.

Bank Indonesia formalized six pillars in the Indonesian banking architecture as targets to be achieved, namely, a healthy banking structure capable of promoting National Economic Development and international competitiveness, an effective regulatory system capable of anticipating the development of domestic and international financial markets, an independent and effective supervisory system, strengthening the internal condition of a strong banking industry, the creation and strengthening of supporting infrastructure that includes the protection and empowerment of customers.

Law No. 21 of 2011 on Financial Services Authority (hereinafter referred to as the OJK law), State Gazette of the Republic of Indonesia in 2011 Number 111, supplement to the State Gazette of the Republic of Indonesia number 5253, was passed and promulgated on November 22, 2011. Article 1 Number 1 of the OJK law states that the Financial Services Authority, hereinafter abbreviated as OJK, is an institution that is independent and free from interference from other parties, which has the tasks, functions, and authority of regulation, supervision, examination and investigation as referred to in this law.

OJK is a financial services supervisory institution such as the banking industry, Capital Markets, Insurance, Mutual Funds, finance companies and pension funds. Normatively, there are four objectives of the OJK, namely: increasing and maintaining public trust in the field of financial services; enforcing laws and regulations in the field of financial services; increasing public understanding of the field of financial services; and protecting the interests of consumers of financial services.

Article 5 of the OJK law states that the OJK has the function of organizing an integrated regulatory and supervisory system for all activities in the financial services sector. The regulation and supervision carried out by the OJK under Article 6 describes the scope of financial services activities in the banking sector, financial services activities in the capital market sector, and financial services activities in the insurance sector, pension funds, finance institutions and other financial services institutions.

Referring to the basis or principle of the implementation of tasks, functions and authority by the OJK as mentioned earlier, that OJK has a duty to always defend and protect public interests, in this case the customer or consumer banking (consumer bank). as is known that in general, there is often a dispute (dispute) between the bank and the customer

Dispute resolution must be done in the FSA first, in the regulation of the FSA on Consumer Protection Financial Services Sectorit is stipulated that each FSA must have a work unit and or function as well as

the mechanism of Service and settlement of complaints for consumers. If dispute resolution in the LJK does not reach an agreement, consumers can resolve disputes outside the court or through the court. Dispute resolution outside the court is done through Alternative Dispute Resolution institutions (LAPS).

LAPS is an institution that conducts dispute resolution in the financial services sector. Dispute resolution services in LAPS there are 3among them, mediation, adjudication and arbitration. Mediation is a way of dispute resolution through a third party (mediator) to help the parties to the dispute to reach an agreement; adjudication is a way of dispute resolution through a third party(adjudicator) to impose a decision on disputes arising between the parties in question. The adjudication decision is binding on the parties if the consumer accepts, in the event that the consumer refuses the consumer can seek other settlement efforts; and arbitration is a way of settling civil disputes out of court based on arbitration agreements made in writing by the parties to the dispute. The arbitral award is final and binding on the parties.

LAPS provides dispute resolution services that are easily accessible, cheap, fast, and carried out by competent human resources and understanding of the financial services industry. Based on POJK Number 1 / POJK.07/2014 on Alternative Dispute Resolution institutions in the Financial Services sector, LAPS has the following principles: a. The principle of accessibility, namely dispute resolution services easily accessible by consumers and covering all of Indonesia; b. The principle of independence, LAPS has a supervisory organ to maintain and ensure the independence of human resources LAPS. In addition, LAPS also has adequate resources so that it does not depend on certain financial services institutions; c. The principle of justice, the Mediator in LAPS acts as a facilitator in order to bring together the interests of the parties in obtaining a dispute resolution agreement, while the adjudicator and arbitrator are required to provide written reasons in each decision.

If there is a rejection of the application for dispute resolution from consumers and Financial Services Institutions, LAPS is obliged to provide written reasons; and the principle of efficiency and effectiveness, LAPS charges a low fee to consumers in dispute resolution, dispute resolution in LAPS is done quickly, the implementation of the decision is supervised by LAPS.

OJK establishes a policy that each financial services sector has one LAPS. This institution is needed if a dispute resolution agreement between consumers and LJK is not reached. In line with the characteristics and developments in the financial services sector that are always fast, dynamic, and full of innovation, LAPS in the financial services sector require procedures that are fast, low cost, and with objective, relevant, and fair results. Dispute resolution through this institution is confidential so that each party in dispute is more comfortable in the dispute resolution process and does not require a long time because it is designed to avoid procedural and administrative delays.

Dispute resolution through LAPS in the financial services sector is carried out by people who do have expertise in accordance with the type of dispute, so that it can produce an objective and relevant decision. With LAPS, there will be certainty for consumers and LJK for disputes that arise. Decisions generated in dispute resolution through LAPS can be made by consumers as learning materials about their rights and obligations. As for LJK, the decision in question can be used to improve and develop products and/or services owned by adjusting to the capabilities and needs of consumers.

Consumers who dispute with the bank can submit a complaint to the LJK to be resolved by deliberation to reach an agreement. If consumers do not reach an agreement with LJK in resolving consumer complaints, they can apply for dispute resolution to LAPS in the financial services sector that has been operating, namely: a.

Indonesian capital market Arbitration Board (BAPMI) to resolve consumer and financial services disputes in the Capital Market Sector; b. Indonesian insurance mediation and Arbitration Board (BMAI) to resolve consumer disputes and LJK in the insurance sector; c. Pension Fund Mediation Board (BMDP) to resolve consumer and LJK disputes in the pension fund sector.

Consumers can also apply to the FSA if LAPS untuksektornya not yet operational. OJK establishes a policy that dispute resolution at the second stage is resolved through the court or out of court. The choice whether through the court or out of court is left entirely to the parties to the dispute, namely consumers and LJK. However, by taking into account the physical characteristics of LAPS in the financial services sector, LJK can use LAPS services in the financial services sector to resolve disputes between consumers and OJK.

In relation to consumer complaints, OJK has established two dispute resolution mechanism policies, namely: a. settlement of complaints made by LJK (internal dispute resolution); and dispute resolution through the judiciary or institutions outside the court (external dispute resolution), if the internal dispute resolution does not reach an agreement. Settlement of disputes outside the court is carried out through LAPS in the financial services sector.

The OJK will still facilitate the resolution of consumer disputes that cannot be resolved through internal dispute resolution, when the laps in the sector have not been formed or LAPS have been formed, but LAPS is unable to carry out its duties to resolve disputes in the financial services sector.

Based on Article 1 Paragraph (6) POJK number 18/POJK.07/2018 about consumer complaints service in the Financial Services Sector that questions that can be resolved by LAPS in the financial services sector are disputes or civil disputes related to the activities of placing funds by consumers in LJK and or the utilization of LJK services or products. If there is a dispute between consumers and LJK, then the dispute is first resolved by the LJK in question. If an agreement is not reached between the consumer and the FSA, then the consumer and the FSA can submit a dispute resolution request to LAPS in the financial services sector contained in the LAPS list set by the FSA. Dispute resolution through the institution in question must precede the existence of an agreement between consumers and LJK which agrees that if the dispute cannot be resolved by deliberation, then both parties agree to resolve it through LAPS in the financial services sector. The agreement of the parties to the dispute to use the LAPS may be made before or after the dispute. But it should be made before a dispute arises, for example, at the time of the contract or preliminary agreement.

Dispute resolution through LAPS in accordance with the agreement of the parties. LAPS in the financial services sector at least provide dispute resolution services in the form of mediation, adjudication, and arbitration. Dispute resolution will usually be taken first by mediation, but if the parties cannot reach an agreement, it can be continued by adjudication or arbitration (according to the parties ' agreement).

OJK in implementing dispute resolution facilities, OJK appoints facilitators who are OJK officers in the field of Education and Consumer Protection, OJK Consumer Services Directorate. After that, the consumer and the Bank must sign a Facilitation Agreement which basically states that the consumer and the Bank have agreed to choose a dispute resolution facilitated by the OJK and will be subject to and comply with the facilitation rules set by the OJK. The process of implementing facilitation by OJK takes at least 30 working days since the signing of the Facilitation Agreement, and can be extended until the next 30 working days based on consumer and bank agreements. The agreement resulting from the facilitation process by OJK is poured into the deed of agreement signed by the consumer and the Bank.

Disputes that have been resolved cannot be submitted for re-facilitation at the OJK and apply as law for consumers and banks. Violation of the implementation of the provisions in the agreement is a default and can be prosecuted through civil liability. If there is no agreement, the consumer and the bank sign the OJK facilitation event and the consumer can file a civil lawsuit in court.

Since 2016 to 2022 OJK has received many complaints from customers who dispute with the bank, all of these complaints have been mediated between parties facilitated by OJK itself, many cases that go to OJK are caused by disputes between banks and customers. Of the many complaints the complaint almost entirely, a civil dispute related with troubled customer credit payment system.

Dispute resolution through LAPS in the financial services sector is carried out by people who do have expertise in accordance with the type of dispute, so that it can produce an objective and relevant decision, with LAPS, there will be certainty for consumers and LJK for disputes that arise. Decisions generated in dispute resolution through LAPS can be made by consumers as learning materials about their rights and obligations. As for LJK, the decision in question can be used to improve and develop products and/or services owned by adjusting to the capabilities and needs of consumers.

Mediation As An Alternative Dispute Resolution In The Settlement Of Banking Disputes

Banking mediation as an alternative to banking dispute resolution is a simple, cheap, and fast way to resolve problems that occur between customers and banks. In addition, the result of mediation, which is an agreement between the customer and the bank, is seen as an effective form of problem solving because the interests of the customer and the bank's reputation can be maintained.

Banking mediation is one form of program implementation that aims to achieve Indonesian banking architecture (API), especially in the sixth pillar, namely Consumer Protection. API itself is designed to be able to achieve a healthy, strong, and efficient banking system in order to create a stable financial system in order to help national economic growth. As stated in Bank Indonesia Regulation (PBI) number 8/5/PBI/2006 which was later amended by PBI number 10/1/PBI/2008 concerning banking mediation, it is stated that mediation is a dispute resolution process involving a mediator to assist the parties to the dispute in order to reach a settlement in the form of voluntary agreement on part or all of the disputed issues. Mediation is intended when there are two or more parties to a dispute. It's just that what is meant by the dispute in this mediation is aimed only at the customer as the party who filed the claim. But on the other hand, the bank also has the right to make demands. Thus there is a double standard applied by Bank Indonesia (BI). What is meant by customers here includes three types of customers. The three customers are individual customers, customers in the form of Micro and small businesses and customers who are legal entities such as banks that are customers of other banks.

The Mediator acts as a mediator who helps the parties to resolve the dispute they face. As a mediator, in addition to being the organizer and leader of the discussion, can also help the parties to design the settlement of disputes, so as to produce mutual agreement. For this reason, a mediator must have the ability to collect as much information as possible that will later be used as material to prepare and propose various options for resolving disputed issues. The purpose of the Institute in general lembagamediasi:

a. To find the best solution to the dispute between the parties, where this solution can be trusted or run and not to seek the truth or impose law enforcement, but to resolve the problem.
b. Socialize and develop the concept of media to the public, government and

organizations in collaboration with various institutions,

c. Encourage the use of media in resolving disputes at all levels of society in accordance with the spirit of deliberation, and
d. Provide mediation services.
e. The form of settlement on the rights is the result of the agreement of the parties to the dispute.

Mediation is a negotiation process for resolving problems (disputes) in which a party, impartial, neutral, does not work with the parties to the dispute, helping them (the disputants) reach a satisfactory negotiation agreement.

In the settlement of disputes between customers and banks, through banking mediation that has been regulated in PBINo.8/5/PBI / 2006 jo PBI No.10/1/PBI / 2008 on MediasiPerbankan. There needs to be a balance between the obligations and rights between the customer and the Bank itself, both in existing regulations and when the later implementation of regulations and when there is mediation. To be able to find out whether the regulation meets justice, we can understand through the following study in PBI No.8/5/PBI / 2006 jo PBI No.10/1/PBI / 2008 on Banking mediation, which takes the side of the customer and the bank in a balanced manner, but there are several articles that must be revised to create a fairness of the regulation, namely:

a. Article 3 Paragraph (2) regarding the establishment of banking mediation institutions submitted by the Banking Association, in practice it turns out that the time allotted by PBI No.8/5/PBI / 2006 which is dated December 31, 2007 is not also formed until now, so that through PBI No.10/1/PBI / 2008 the deadline is omitted and Article 3 Paragraph (2) is omitted.
b. Article 5 Paragraph (2) PBI No. 8/5/PBI / 2006 jo PBI No.10/1/PBI / 2008 in terms of requirements to be a mediator.
c. Article 6 PBI No.8/5/PBI / 2006 jo PBINo.10/1/PBI / 2008 related to disputes that can be submitted to Bank Indonesia or Lmpi are disputes that have a financial claim value of at most Rp500, 000, 000.00 (five hundred million rupiah) and not a financial claim resulting from the loss of immaterial.
d. Article 8 paragraph (6) PBI PBI No. 8/5/PBI / 2006 jo PBINo.10/1/PBI / 2008 provision about the submission of the dispute not later than 60 working days from the date of settlement of the complaint submitted by the bank to the customer. There should be an alternative if the bank does not provide a written answer to the customer or the bank does not respond to customer complaints in the framework of customer complaints in writing.
e. Article 13 PBI No. 8/5 / PBI/2006 joPBI No.10/1/PBI / 2008 it is stated that the Bank shall implement the results of the settlement of banking disputes between the customer and the Bank that has been agreed and set forth in the deed of agreement.

From these articles can be seen that the regulation of dispute resolution between customers and banks can not be said to be fair because there are still many disadvantages. In terms that have been concluded in this writing the authors suggest that: need to be reviewed existing regulations, which meet the justice for the various parties, need to be considered in order to meet the principle of dispute resolution is simple, fast, and light cost in the form of granting freedom of the parties to choose a dispute resolution forum, need to likely to be affected by the leak. This is also to confirm that the bank is actually a party to the mediation process that has the potential to suffer financial losses in financial transaction activities with customers and should exist education to the public about banking, especially about the mediation process in banking.

CONCLUSIONS

Implementation of banking dispute settlement after the release of the OJK law,

there was a transition of authority related to institutions that became facilitators of banking mediation from BI to OJK which was handled by the education and Consumer Protection sector, Directorate of Consumer Services. To exercise the authority of the OJK issued the relevant regulations, namely POJK No.1 / POJK.07/2013 on Consumer Protection of Financial Services Sector, POJK No.1 / POJK.07/-2014 about Alternative Dispute Resolution institutions, and SE OJKNomor 2 / SEOJK.07/2014 on services and settlement of Consumer Payments To Financial Services businesses.

With mediation as an alternative dispute resolution in the settlement of banking disputes, it is expected that there will be a meeting point for resolving problems or disputes faced by the parties, which will then be set forth as a mutual agreement between the parties to the dispute. Its mediasitionality is informal, voluntary, forward-looking, cooperative and interest-based. In mediation, the parties are placed as active participants in the decision-making process and participate directly in resolving disputes in the interests of the future. An agreement that can be accepted by both parties to the dispute becomes the main goal of this mediation process.

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