



THE URGENCY AND FINANCIAL SERVICES SECTOR DISPUTE SETTLEMENT MECHANISM THROUGH ALTERNATIVE DISPUTE SETTLEMENT INSTITUTIONS

Aprinisa¹

Faculty of Law, Universitas Bandar Lampung. Email: aprinisa@ubl.ac.id

Abstract: *Settlement of disputes that occur between Consumers and Financial Services Providers can not only be done through litigation (court) but there are also other options through Alternative Dispute Resolution (non-litigation) channels which are commonly called APS. The choice of dispute resolution through APS is an answer to the needs of Financial Services Enterprises and consumers since it is efficient, effective, and low cost so that it can reduce operational costs. In addition, with the support of sophisticated dispute resolution technology through the Financial Services Sector Alternative Dispute Resolution Institution, the disputing parties do not have to meet face-to-face but it can be done using electronic media. The method used in this research is a normative juridical study, by examining the norms/rules contained in the legislation and library materials. The study in this research is about the urgency and mechanism of dispute resolution through the Alternative Dispute Resolution Institution in the Financial Services Sector.*

Keywords: *Alternative Dispute Resolution Institutions in the Financial Services Sector, Consumers, Financial Services Business Enterprises.*

I. INTRODUCTION

The stretch of the business world demands that all aspects of economic life move dynamically in synergy with new innovations, especially with the support and convenience created by technology that shifts and changes human civilization from the conventional system to the digital era. The financial sector is a major contributor to a country's economic activities, in which many parties are involved. Various advances and changes that occur will lead to more friction, which in the end will give birth to disputes that lead to disputes between Consumers and Financial Services Businesses.

The National Consumer Protection Agency noted that during the January-May 2021 period, there were 2,398 complaints with a total value of consumer losses reaching Rp 1 trillion, the number of complaints and consumer losses in 2021 in mid-June increased significantly compared to 2020 there were 1,372 complaints with a total consumer loss reached Rp493 billion¹. The quick resolution is desirable in resolving

¹ <https://bisnis.tempo.co/read/1470315/kerugian-konsumen-tembus-rp-1-triliun-terbanyak-aduan-soal-jiwaseraya>, accessed 22/02/2022

disputes that occur, the Alternative Dispute Resolution (ADR) system by resolving disputes out of court (non-litigation) is the choice of the disputing parties. In general, every type of dispute that occurs, always demands a quick resolution and settlement. Currently, the settlement of disputes out of court (Non Litigation) is one of them through alternative dispute resolution.²

Alternative Dispute Resolution (ADR) is now increasingly being used by business people as a way of resolving disputes outside the court (non-litigation). Business actors are increasingly reluctant to use litigation (courts) in dispute resolution because the reputation of the justice system in Indonesia is not conducive to business development in the future.³ Dispute resolution through the Alternative Dispute Resolution method (non-litigation) is preferred, enthused and chosen by business actors in this case is the Financial Services Businesses because this settlement is considered more effective and efficient by saving time compared to settlement through litigation (court). In addition, the confidentiality of disputes that occur between the parties is also guaranteed. Another consideration that makes Financial Services Businesses and consumers choose the Alternative Dispute Resolution route is that there are no parties who feel that they have lost and won in dispute resolution or in other words, the settlement is a win-win solution.

II. DISCUSSION

The Urgency Of Dispute Settlement Institutions In The Financial Services Sector.

To actualize a national economy that is able to grow sustainably and stably, it is necessary to have activities in the financial services sector that are organized regularly, fairly, transparently and accountably, as well as being able to realize a financial system that grows sustainably and stably, and capable of protecting the interests of consumers and society. Business disputes are part of civil disputes that can be resolved through litigation (judicial) or non-litigation (outside court). Civil lawsuits through the courts take a long time because decisions at the first level (district Court) can still be appealed to the High Court up to an appeal to the Supreme Court. This is what makes business people prefer to take the non-litigation route through Alternative Dispute Resolution (ADR). The ADR model of dispute resolution has been regulated in Law 30/1999 on Arbitration and Alternative Dispute Resolution which came into force on 12 August 1999.⁴ In connection with the transfer of duties, functions and authorities to regulate and supervise banking from Bank Indonesia to the Financial Services Authority due to the enactment of Law No. 21 of 2011 concerning the Financial Services Authority, the function of regulation and supervision in the financial services sector is also switched.⁵

² Syarifah Aminah; Renny Supriyatni; Helza Nova Lita. 2021. *Eksistensi Lembaga Alternatif Prnyelesaian Sengketa Perbankan Indonesia*. Jurnal Poros Hukum Padjadjaran.

³ Iswi Hariyani; Cita Yustisia Serfiyani. 2016. *Perlindungan Hukum Bagi Nasabah Kecil Dalam Proses Adjudikasi Di Industri Jasa Keuangan*. Jurnal Legislasi Indonesia, Volume 13 Nomor 4.

⁴ Iswi Hariyani. 2010. *Prosedur Mengurus HAKI Yang Benar*, Cetakan I, Pustaka Yustisia, Yogyakarta, p. 26

⁵ Adistyia Dinna. *Penyelesaian Sengketa Perbankan Melalui Mediasi Menurut Uu Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*, Lex et Societatis, Vol. V/No. 6/Ags/2017

The role of Bank Indonesia is replaced by the Financial Services Authority (hereinafter referred to as FSA) as a regulator and supervisor of activities in the financial services sector where the settlement of business disputes in the financial services sector has special arrangements by FSA as contained in the Financial Services Authority Regulation. The definition of dispute contained in the provisions of Article 1 point 6 of the Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Settlement of Financial Services Sector Disputes is a dispute between consumers and Financial Services Businesses Actors that have gone through the complaint process by the Financial Services Enterprises and is caused by the existence of losses and/or potential material, reasonable and direct losses to the Consumers because the Financial Services Enterprises do not fulfill the agreements and/or financial transaction documents that have been agreed.⁶

The role of settlement institutions is expected to assist in the settlement of non-performing (problematic) financing between customers and banks. The settlement process is divided into two, namely litigation (court) and non-litigation (out of court).⁷ The advantages possessed by Alternative Dispute Resolution Institutions in resolving business disputes are the main choice for consumers and financial services providers compared to resolving disputes through the courts (litigation). In general, there are several advantages of ADR, which are as follows:⁸

1. ADR guarantees the confidentiality of the parties because the dispute resolution process is carried out in a closed manner (not open to the public).
2. The proceedings in the ADR are simpler than those in the Court.
3. ADR guarantees the dignity of the parties because it is a win-win solution.
4. Dispute resolution through Alternative Dispute Resolution is faster, cheaper, and more effective than through the Court (Litigation).
5. ADR further ensures that the parties will maintain good relations in the future.
6. ADR is more effective in protecting the interests of consumers or small entrepreneurs.

Dispute settlement out of court is based on the needs of consumers that must be fulfilled, for this reason it is deemed necessary and important to establish rules governing Alternative Dispute Settlement Institutions for the Financial Services Sector. Financial Services Authority Regulation Number 61/POJK.07/2020 was formed to regulate the dispute resolution system through the Alternative Dispute Resolution Institution for the Financial Services Sector.

⁶ Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

⁷ Tengku Rahmah Ramadhani, Andri Brawijaya, Imam Abdul Aziz. 2021. *Peran Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI) dalam Penyelesaian Sengketa Pembiayaan di Bank Syariah*. Tawazun: Journal of Sharia Economic Law, Volume 4, Nomor 1.

⁸ Iswi Hariyani, Cita Yustisia Serfiani, R. Serfianto D. Purnomo. 2018. *Penyelesaian Sengketa Bisnis*. PT. Gramedia Pustaka Utama, Jakarta, p. 54

To meet the needs of consumers in the financial services sector for out-of-court dispute resolution, it is necessary to establish regulations regarding Alternative Dispute Settlement Institutions for the Financial Services Sector. In addition, to meet the needs of consumers in the financial services sector for dispute resolution out of court, it is important to have arrangements regarding Alternative Dispute Resolution Institutions for the Financial Services Sector, which was then born POJK Number 61/POJK.07/2020 in order to improve the rules that previously existed.

Alternative Institutions for Settlement of Financial Services Sector Disputes, hereinafter referred to as LAPS according to Article 1 point 1, are institutions that carry out dispute resolution in the financial services sector out of court.⁹ The purpose of the establishment of the Financial Services Sector Alternative Dispute Resolution Institution for the Financial Services Sector is that dispute resolution services in the financial services sector:¹⁰

- a. Organized independently, fairly, effectively, and efficiently, and easily accessible; and
- b. Trusted by Consumers and Financial Services Enterprises.

This is a factor in consideration of the importance of the existence or existence of Alternative Dispute Settlement Institutions because disputes between consumers and Financial Services Enterprises do not always result in an agreement between the parties, in addition to protecting the rights of consumers, Alternative Dispute Settlement Institutions is needed in resolving business disputes that are efficient and effective in order to maintain continuity of business activities.

The implementation of integrated dispute resolution services in the financial services sector is a function of the Financial Services Sector Alternative Dispute Settlement Institutions so that this makes it easier to resolve a dispute because the disputing parties are given the option to resolve what occurs. Based on Article 4 POJK No. 61/POJK.07/2022, Financial Services Sector Alternative Dispute Settlement Institutions has the following duties and authorities:

- a. Carry out handling and settlement of Consumer Disputes;
- b. Providing consultation on the settlement of Disputes in the financial services sector;
- c. Conducting research and development of Dispute resolution services in the financial services sector; Making regulations for the settlement of Disputes in the financial services sector;
- d. Cooperating with consumer protection institutions/agencies both nationally and internationally; and
- e. Developing competence of mediators and arbitrators registered with the Financial Services Sector Alternative Dispute Settlement Institutions.

⁹ Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

¹⁰ *Ibid*

For the Financial Services Sector Alternative Dispute Settlement Institutions in the form of a legal entity in the form of an association legal entity registered with the ministry that carries out government affairs in the fields of law and human rights.¹¹ The complexity and widespread of industry in the business world, both in conventional and sharia systems, is deemed necessary to establish Alternative Dispute Settlement Institutions in the financial services sector in order to improve efficiency, effectiveness and services for dispute resolution. The expectation of the Alternative Dispute Settlement Institutions formation in the financial services sector is hopefully being able to provide services to consumers and parties in the industry/business world with convenience in dispute resolution. Technological developments can be also used to reduce the operational costs of Alternative Dispute Settlement Institutions in the financial services sector, but the quality of service must be maintained.

Dispute Settlement Mechanism Through Dispute Settlement Institutions Financial Services Sector.

The provisions regarding the Financial Sector Alternative Dispute Settlement Institutions were previously regulated in the Financial Services Authority Regulation Number 1/POJK.07/2012 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. However, as time goes by and the development of the era, technology and demands also need to protect the rights of the parties involved in business disputes. Moving on from that, it is necessary to refine the old regulations in order to realize a more effective and efficient Alternative Dispute Settlement Institutions for the Financial Services Sector to respond to the development of technology, products and financial services that are increasingly complex and cross-financial, so the regulation regarding the Alternative Dispute Settlement Institutions in the Financial Services Sector is amended by an Authority Regulation. Financial Services Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

Currently in Indonesia there are 6 (six) Alternative Dispute Resolution Institutions in the financial services sector, namely:

- a. Alternative Indonesian Banking Dispute Settlement Institutions;
- b. Indonesian Capital Market Arbitration Board;
- c. Indonesian Insurance Mediation and Arbitration Agency;
- d. Indonesian Guarantee Company Arbitration and Mediation Board;
- e. Indonesian Pawnshops and Financing Mediation Agency;
- f. Pension Fund Mediation Agency.

Dispute resolution by the Financial Services Sector Alternative Dispute Resolution Institution has a specific field and is registered with the Financial Services Authority. All of the Alternative Dispute Resolution Institutions in the financial services sector above are registered with the Financial Services Authority, each of the Alternative Dispute Resolution Institutions in the financial services sector has a specific field in

¹¹ *Ibid*

resolving industrial disputes. The principles adopted by Alternative Dispute Resolution Institutions in the Financial Services Sector are:¹²

- a. Accessibility Principle.
- b. Principle of Independence.
- c. The Principle of Justice.
- d. Principles of Efficiency and Effectiveness.

Based on Article 32 of POJK No. 61/POJK.07/2020 the criteria that can be handled by the Financial Services Sector Alternative Dispute Settlement Institutions are:

- a. Complaints have been resolved by the Financial Services Business Actors but were rejected by the Consumer or the Consumer has not received a response to the complaint as regulated in the Regulation of the Financial Services Authority regarding consumer complaint services in the financial services sector;
- b. The dispute submitted is not a dispute in process or has been decided by a judicial institution, arbitration, or other alternative dispute resolution institution; and Disputes are civil.

Dispute resolution through the Financial Services Sector Alternative Dispute Settlement Institutions can be done through:

- a. Face-to-face before the mediator or arbitrator;
- b. Electronic media; and/or
- c. Document check.

That the dispute resolution through the Financial Services Sector Alternative Dispute Settlement Institutions aims to provide convenience to Consumers and Financial Services Business Actors who are in dispute to resolve their disputes with various media, both dealing directly and online between parties so that dispute resolution is efficient and effective.

Technological sophistication is utilized in an effort to resolve disputes online so that the parties do not need to deal directly, the parties can reduce operational costs and energy to resolve a dispute through the Financial Services Sector Alternative Dispute Settlement Institutions. Settlement of disputes through electronic media as referred to is carried out through long-distance communication media that allows all parties to hear or see and hear directly and participate in meetings, electronic devices that are a necessity and lifestyle can be utilized. Conventional and manual things and styles are shifting towards digital which makes it easier for humans to carry out their life activities. The fact that we are required to make changes which will eventually make it easier for whatever access is intended, as well as document checking that can be done through electronic channels. Mechanisms used in dispute resolution through the Financial Services Sector Alternative Dispute Settlement Institutions are not only limited to face-to-face, but space and time constraints can be overcome, which in the end costs are cheap and a quick settlement is no longer just a fantasy. This is a significant comparison in business dispute resolution.

¹² *Ibid*

III. CONCLUSION

Dispute resolution through the Alternative Dispute Resolution method (non-litigation) is preferred and in demand by business actors, in this case the Financial Services Business Enterprises because this settlement is considered more effective and efficient by saving time compared to settlement through litigation (courts). To meet the needs of consumers and Financial Services Enterprises in the financial services sector for out-of-court dispute resolution, it is necessary to establish an Alternative Dispute Resolution Institution for the Financial Services Sector. That the dispute resolution through the Financial Services Sector Alternative Dispute Settlement Institutions aims to provide convenience to Consumers and Financial Services Business ENTERPRISES who are in dispute to resolve their disputes with various media, both dealing directly and online between parties so that dispute resolution is efficient and effective.

REFERENCES

Adistya Dinna. *Penyelesaian Sengketa Perbankan Melalui Mediasi Menurut UU Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan*, Lex et Societatis, Vol. V/No. 6/Ags/2017.

Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

<https://bisnis.tempo.co/read/1470315/kerugian-konsumen-tembus-rp-1-triliun-terbanyak-aduan-soal-jiwaseraya>,

Iswi Hariyani, Cita Yustisia Serfiani, R. Serfianto D. Purnomo. 2018. *Penyelesaian Sengketa Bisnis*. PT. Gramedia Pustaka Utama, Jakarta.

Iswi Hariyani. 2010. *Prosedur Mengurus HAKI Yang Benar*, Cetakan I, Pustaka Yustisia, Yogyakarta.

Iswi Hariyani; Cita Yustisia Serfiani. 2016. *Perlindungan Hukum Bagi Nasabah Kecil Dalam Proses Adjudikasi Di Industri Jasa Keuangan*. Jurnal Legislasi Indonesia, Volume 13 Nomor 4.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Syarifah Aminah; Renny Supriyatni; Helza Nova Lita. 2021. *Eksistensi Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia*. Jurnal Poros Hukum Padjadjaran.

Tengku Rahmah Ramadhani, Andri Brawijaya, Imam Abdul Aziz. 2021. *Peran Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI) dalam Penyelesaian Sengketa Pembiayaan di Bank Syariah*. Tawazun: Journal of Sharia Economic Law, Volume 4, Nomor 1.