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Optimizing the Empowerment of Mediation Institutions in Banking Dispute Resolution in Indonesia

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Abstract

The development of the banking business in the digitalization era is increasingly complex, which has the potential to cause disputes with a variety of legal issues. This writing aims to examine and analyze how to empower mediation institutions in resolving business disputes in Indonesia. This writing method is included in normative juridical writing, which is based on a study of statutory provisions and conseptual aspects. In the provisions of laws and regulations both in the Civil Code, the Law on Banking, Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration, including technical regulations at the Judicial level such as Supreme Court Regulation Number 1 of 2016 regarding Mediation, it has been regulated regarding the Mediation settlement mechanism. There are various factors that affect mediation institutions that cannot be carried out optimally, namely, banking mediation regulations are inadequate, lack of public understanding (customers), weak banking mediation institutions, weak implementation of mediation. It is necessary to make a social-comprehensive legal breakthrough so that mediation institutions can be empowered more optimally in resolving banking disputes.

KEYWORDS
Empowerment, Mediation Institutions, Settlement, Banking Disputes.

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Introduction

Banks provide services such as clearing, money transfers, buying and selling foreign exchange, offering safe deposit boxes for products and securities, and so on, in addition to the above-mentioned business activities. Banks can act as agents of trust (trust-based institutions), development agents (institutions that mobilize finances for economic development), and agent services (institutions that provide various financial services to the public).

A bank's function can be more clearly described as an agent of trust, an agent of development, and an agent of services. The basic foundation of banking activities, both in terms of raising cash and channeling funds, is trust. If there is an element of confidence, the people will desire to deposit their funds in the bank. People think that their money will not be exploited by the bank, that their money will be well handled, that the bank will not go bankrupt, and that the public will be able to withdraw their deposits in the bank again at the specified time. If there is an element of trust, the bank will wish to place or distribute funds to creditors or the general public. The bank believes that the debtor will not misappropriate the loan funds, that the debtor will handle the loan money well, that the debtor will be able to pay when it is due, and that the debtor has good value to repay the loan and other obligations when they are due.[1]

A country's banking sector is a development agent because banks are financial institutions that function as financial intermediation institutions, that is, institutions that collect funds from the community in the form of savings and distribute them back to the community in the form of credit or financing. Banks are also agents of trust, which reminds people of one of the principles of bank management, namely the trust principle.[2]

[1] Widya Kurniati Anwar, "Penyelesaian Sengketa Perbankan Melalui Mediasi Di Indonesia1," *Lex Privatum* II, no. 2 (2014): 35–43.
[2] Anwar.

Article 34 of Law of the Republic of Indonesia No. 23 of 1999 concerning Bank Indonesia, as amended by Law No. 3 of 2004 concerning Bank Indonesia and amended by Law No. 6 of 2009, mandates the establishment of a supervisory institution for the financial services sector, which includes banking, insurance, pension funds, securities, venture capital, and finance companies, as well as bodies that organize public funds.

Prior to the founding of the Financial Services Authority (OJK), in order to achieve a sound and stable banking system, banks were subject to the supervision of Bank Indonesia, which served as the central bank. Bank Indonesia's role as a central bank strives to achieve and maintain rupiah value stability. To achieve this goal, Bank Indonesia has the following responsibilities, as stated in Article 8 of Law Number 23 of 1999: a) to develop and implement monetary policy; b) to manage and maintain the smooth operation of the payment system; and c) to regulate and oversee banks.[3]

This strategy was implemented in response to numerous problems in the banking system, which resulted in a crisis that ended in the liquidation of 21 (twenty-one) national private banks in crisis by Bank Indonesia, which discovered numerous irregularities, prompting many to question Bank Indonesia's oversight. Similarly, the unexpected designation of Bank Century as a failed bank by Bank Indonesia had a systemic impact. The numerous challenges in the financial services sector, particularly in the banking sector, that threaten financial system stability have forced the development of an integrated supervisory authority in the financial services sector. Bank Indonesia's functions, duties, and authorities for regulating and supervising financial services activities in the banking industry were transferred to the Financial Services Authority. Banking supervision in Indonesia has been transferred from Bank Indonesia to an independent

[3] Marulak Pardede et al., "The Settlement of Consumer Disputes by Virtual Mediation Particularly on Banking and Buying Services Online," *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)* 549, no. March 2020 (2021): 294–307, https://doi.org/10.2991/assehr.k.210506.040.

entity with a legal foundation in Law Number 3 of 2004 amending Law Number 23 of 1999 concerning Bank Indonesia.[4]

The Indonesian Financial Services Authority is based on Article 34 of Law Number 3 of 2004 amending Law Number 23 of 1999 addressing Bank Indonesia (BI). The government was obligated to establish an independent financial services sector supervisory agency, known as the Financial Services Authority (OJK), by the end of 2010. This organization is in charge of overseeing the banking industry, insurance, pension funds, capital markets, venture capital, and finance corporations, as well as other public-funding management agencies. The Financial Services Authority has broad powers, including the ability to make regulations in the field of financial services, grant and revoke permits and other approvals, obtain periodic reports and information on the financial services industry, impose administrative sanctions, carry out inspections, conduct investigations into violations of laws, provide written directions or orders, appoint statutory managers, and require business transfers in order to protect the integrity of the financial services industry.

Indonesian banking operates on the basis of economic democracy and the idea of prudence. Aside from that, the relationship between the Bank and its customers necessitates the application of the precautionary principle, one form of which is the application of the Know Your Customer Principle, which is part of the precautionary principle used by the bank to determine the customer's identity and monitor customer transaction activities. This includes reporting questionable transactions. This principle is governed by Bank Indonesia Regulation Number 5/23/PBI/Year 2003, which was issued on October 23, 2003.[5]

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[4] Surti Yustianti, "Kewenangan Pengaturan Dan Pengawasan Perbankan Oleh Bank Indonesia Dan Otoritas Jasa Keuangan (Ojk)," *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan Dan Ke-PPAT-An* 1, no. 1 (2017): 60, https://doi.org/10.24198/acta.v1i1.66.
[5] Lukmanul Hakim and Oktaria Trivilta, "Prinsip Mengenal Nasabah, Penerapan, Prinsip Kehati-Hatian, Lembaga Perbankan.," *Keadilan Progresif* 9, no. 2 (2018): 150.

Prudence is a philosophy or principle that stipulates that a bank must exercise caution in carrying out its functions and business activities in order to protect the public funds it entrusts, especially in the distribution of cash originating from funds raised. Banks are required to have and implement an internal control system in the form of self-regulation in all management of banking activities, both in operations and credit, in order to support or guarantee the implementation of the decision-making process in bank management in accordance with the principle of prudence. Particularly in extending credit to bank customers, they must be more careful and be able to introduce customers more in the 5C way, namely character, collateral, capacity, capital, and economic conditions.[6]

The interpretation of credit in Article 1 number 11 of Law No. 10 of 1998 concerning banking is the provision of money or bills that can be equated with it, based on a loan agreement or agreement between the bank and another party that requires the borrower to pay off the debt after a certain period of time with the provision of interest. According to this definition, a credit contains the following elements: a. Credit or creditors, specifically banks; b. Acceptance of credit or debtors. The recipient of this credit can be an individual, such as an entrepreneur or an ordinary employee, or a company or business entity; c. Money provision; d. The credit agreement establishes the rules and regulations of this relationship; e. Time period, namely the credit repayment period; f. Interest on credit enjoyed by the debtor. Indeed, Islamic banks do not charge interest, but there are other arrangements, such as profit sharing.[7]

According to Law Number 21 of 2008 concerning Islamic Banking, Islamic banks are banks that carry out activities based on sharia principles, or the principles of Islamic law regulated in the fatwa of the Indonesian Ulema Council, such as the principles of justice and balance (*adl wa*

[6] Rahman Ambo Masse and Muhammad Rusli, "Islamic Banking Dispute Resolution in National Sharia Arbitration Board," *IOP Conference Series: Earth and Environmental Science* 175, no. 1 (2018), https://doi.org/10.1088/1755-1315/175/1/012169.
[7] Masse and Rusli.

tawazun), benefit (*Maslahah*), universalism (*alamiyah*), and do not contain *gharar, maysir, usury, unjust and haram* objects. The implementation of Sharia banking functions and supervision from the standpoint of prudence and good governance is likewise carried out by the OJK, but with arrangements and a supervisory system tailored to the operational system of Sharia banking.

Sharia banking must always follow the following principles in its operations: a. Justice, which means that profits are shared on the basis of real sales based on each party's contribution and risk; b. Partnership, which means that the positions of investor customers (fund depositors), fund users, and the financial institutions themselves are equal as business partners who synergize with each other to gain profits; c. Transparency, Sharia financial institutions will provide financial reports openly and continuously so that investor customers can make informed decisions.

The focus of this research is on empowerment or optimization of the role of mediation in resolving banking disputes, which is different from previous research which focused on the role of mediation in resolving banking disputes. The research entitled The Role of Profitability Mediation in the Influence of Solvency on Company Value in the Indonesian Banking Sector focuses on profitability intermediation in the relationship between solvency and company value in the Indonesian banking sector.[8] The research entitled The Role of Bank Indonesia as Implementer of Mediation in Banking Dispute Resolution focuses on banking mediation which has not been utilized optimally. Bank Indonesia does not have the task of mediating banking disputes.[9] The research entitled Settlement of Banking Disputes Through Banking Mediation focuses on banking mediation as a very effective resolution option because it can shorten time and the results of the mediation can be executed by both parties to the dispute. The agreement

[8] Endah Arianti Putri and Giri Suseno, "Peran Mediasi Profitabilitas Pada Pengaruh Solvabilitas Terhadap Nilai Perusahaan Di Sektor Perbankan Indonesia," *JSIM: Jurnal Ilmu Sosial Dan Pendidikan* 5, no. 1 (2024).
[9] Herliana, "Peran Bank Indonesia Sebagai Pelaksana Mediasi," *Mimbar Hukum* 22, no. 1 (2010).

reached in mediation is stated in a deed of agreement which is final and binding on the parties. It is said to be final because the mediation decision is not permitted for re-mediation and the agreement is considered binding as law. However, if the two parties do not find an agreement and do not find common ground in negotiations, the parties can register their case with a mediation institution.[10] The research entitled The Role of Mediation Institutions in Resolving Sharia Business Disputes focuses on the occurrence of disputes between customers and banks which are caused by the bank not fulfilling the customer's financial demands, so at the stage of resolving customer complaints, efforts can be made to resolve them through banking mediation.[11] The research entitled The Role of Mediation Through Banking Institutions in Resolving Banking Credit Disputes: A Literature Review focuses on the role of mediation through banking institutions in resolving disputes, namely practically acting as a mediator in resolving disputes. The role of mediation through other banking institutions is to provide education to the parties in dispute about their rights and obligations. Apart from that, mediation through banking institutions also plays a role in sustainable risk management. Mediation through banking institutions has several advantages, namely cost and time effectiveness, confidentiality of the process and the disputing parties, as well as solutions that are beneficial to both parties. Furthermore, mediation can also provide certainty of results and reduce the burden on the courts.[12]

Method

[10] Luh Putu Vera Astri Pujyanti and Amelia Kandisa, "Penyelesaian Sengketa Perbankan Melalui Mediasi Perbankan," *IUS: Kajian Hukum Dan Keadilan* 3, no. 8 (2015): 223–31.
[11] Rudi Hermawan, "Peran Lembaga Mediasi Dalam Penyelesaian Sengketa Bisnis Syariah," *Et-Tijarie: Jurnal Hukum Dan Bisnis Syariah* 5, no. 1 (2018), https://doi.org/10.21107/ete.v5i1.4595.
[12] M Ibnu Sumrana, Taufiq Amini, and Muh Reza Zulfikar, "Peran Mediasi Melalui Lembaga Perbankan Dalam Penyelesaian Sengketa Kredit Perbankan: A Literatur Review," *Jurnal Universitas Muslim Indonesia* 9, no. 1 (2024): 63–78.

This study is a sort of qualitative research that adheres to the normative legal research typology. The normative juridical method is one that examines theories, conceptions, legal principles, and statutory rules in relation to the major legal content optimizing the empowerment of mediation institutions in banking dispute resolution in Indonesia. This method is also known as the library method, because it involves studying books, laws and regulations, and other materials connected to the inquiry. In this study, a statutory approach and an analytical method were applied. The collected data will be identified and organized methodically, incorporating information obtained from primary, secondary, and tertiary legal materials. The findings from the literature and document studies were then related to related theories, written descriptively, and examined qualitatively.

Result and Discussions

Settlement Of Banking Disputes Through Mediation Institutions

In general, civil dispute resolution can take several forms, including arbitration, negotiation, mediation, conciliation, and litigation. This is an Alternative Dispute Resolution (ADR) in settling disputes that are easy, quick, and low cost. Because resolving disagreements through the legal system is hard, expensive, and time-consuming.

Currently, mediation is only used to settle civil issues. This is because it is believed that the debate does not hurt society as a whole. There are various types of issues that can be handled by mediation in Indonesia, including financial, consumer, labor, and court problems. The availability of alternative conflict resolution is supposed to lower the amount of cases piling up in court and to promote a sense of fairness to the community.

The occurrence of a dispute between the parties allows each party to select the approach to be utilized to address the situation. Each party has the option of proceeding in or out of court. In general, dispute settlement through the courts is initiated by one of the parties. Meanwhile, out-of-court

dispute resolution can only be accomplished if the parties agree, in other words, if each party is acting in good faith.

Mediation is the process of settling disagreements through mediation with a third party, specifically the one who provides feedback to the parties in order for them to resolve their issue. The parties have control over the outcome of mediation. In Indonesia, mediation is well-known but underdeveloped. The following conditions must be met for mediation to be successful: a. The parties want to resolve the case; b. The parties want to continue doing business; c. The parties are aware that litigation is time-consuming, expensive, and has negative publicity; and D. A good mediator can facilitate communication between both parties, is fair, and has expertise in resolving cases.[13]

Some of the benefits of Mediation include: [14]

a. voluntary agreement of the parties, mediation can only be carried out if the parties voluntarily choose to resolve the dispute through mediation without coercion from the other party;
b. maintaining good relations (forward-looking), by choosing a mediation settlement, good relations between the two parties can be maintained because they are not facing each other as opponents in court;
c. maintaining the interests of each party, the ultimate goal of mediation is to achieve a win-win solution, so that the interests of the parties are not ignored.; and
d. the procedure is inexpensive, quick, and uncomplicated, the mediation procedure is free of coercion so that the interests of the parties can be safeguarded without ignoring other interests.

As a result, holding mediation for the disputants will help to: [15]

[13] Ayesha Rashid and Muhammad Hassan, "Understanding the Role of Ethical Leadership and Workplace Conflicts a Mediation Moderation Model: A Time-Lagged Study," *IRASD Journal of Management* 4, no. 2 (2022): 219–40, https://doi.org/10.52131/jom.2022.0402.0075.
[14] Masse and Rusli, "Islamic Banking Dispute Resolution in National Sharia Arbitration Board."
[15] Masse and Rusli, "Islamic Banking Dispute Resolution in National Sharia Arbitration Board."

a. reduce barriers and communication problems between the parties involved, the goal of mediation is to find a solution for both parties, not choose right and wrong.;
b. maximize exploration of long-term problem/conflict resolution alternatives, the dispute resolution chosen is the best solution for both parties so that it does not favor one party.;
c. focus on the needs of all parties, the interests of each party are something to be taken into consideration and should not be ignored.; and
d. build a long-term conflict resolution model, The parties are on equal footing and not as opponents so that good relations will be maintained.

Mediation can be successful if the parties are in an equal bargaining position and value their future relationships. If there is a desire to address the issue without a protracted and deep antagonism, mediation is the best option. Mediation is being promoted as an alternate dispute resolution method in Indonesia. Mediation can take place in or out of court, depending on the wishes of each party.[16] Courtroom mediation has long been practiced. Before the main case examination, the parties that file their case to court must first go through a mediation procedure. Meanwhile, we are familiar with mediation outside of the courtroom, such as banking mediation, industrial relations mediation, insurance mediation, and so on.

According to Article 30 of the OJK Law, the OJK has the authority to defend the law for the protection of consumers and the public, including ordering or taking certain actions against Financial Services Institutions to resolve consumer complaints that have been harmed by the said Financial Services Institution. OJK can also file a lawsuit to recover assets belonging to the injured party from the party causing the loss, whether they believe they are under the control of the party causing the loss or under the control of another party in bad faith; and/or to obtain compensation from parties

[16] Aishat Abdul-Qadir Zubair, "An Analysis of Dispute Resolution Mechanisms in the Islamic Banking and Finance Industry in Malaysia," *Jurnal Hukum Novelty* 11, no. 2 (2020): 164, https://doi.org/10.26555/novelty.v11i2.a16465.

causing losses to consumers and/or financial service institutions as a result of financial services sector law and regulation violations. In terms of consumer complaint services, Financial Services Providers (PUJK) are expected to have and operate a service mechanism and complaint resolution for consumers. Consumers must be informed about the complaint service and resolution method.

PUJK is obligated to follow up on and address complaints within 20 working days of receipt, with the term being extended up to a maximum of further 20 working days under specific conditions. Furthermore, financial service company actors are expected to have work units and/or capabilities to handle and resolve client complaints. After receiving consumer complaints, financial service business actors must: a. conduct competent, correct, and objective internal examination of complaints; b. conduct analysis to ensure the truth of the complaint; and c. express an apology and offer compensation (redress/remedy or repair of products and or services, if the consumer complaint is true.[17]

If a complaint resolution agreement cannot be reached, the consumer has the option of settling outside of court or in court. Alternative Dispute settlement Institutions handle dispute settlement outside of the court in question. Consumers can submit petitions to the OJK to facilitate the settlement of consumer complaints that have been harmed by actors in the Financial Services Business if dispute resolution is not carried out through an Alternative Dispute Resolution Institution.

OJK's supply of consumer complaint resolution services is based on complaints suggesting disputes in the financial services industry, and customers suffer financial losses as a result of:[18]

a. Financial Services Providers in the field of Banking, Capital Markets, Pension Funds, Life Insurance, Financing, Pawn

[17] Anwar, "Penyelesaian Sengketa Perbankan Melalui Mediasi Di Indonesia1."
[18] Yustianti, "Kewenangan Pengaturan Dan Pengawasan Perbankan Oleh Bank Indonesia Dan Otoritas Jasa Keuangan (Ojk)."

Companies or Guarantees, a maximum of IDR 500,000,000 (five hundred million rupiahs);

b. Financial Services Providers in the field of general insurance is a maximum of IDR 750,000,000 (seven hundred and fifty million rupiahs);
c. The consumer submits a written application accompanied by supporting documents relating to the complaint;
d. The Financial Services Providers have made efforts to resolve the complaint but the consumer cannot accept the settlement or has passed the time limit as stipulated in the OJK Regulations;
e. . The complaint submitted is not a dispute in process or has been decided by an arbitration institution court, or other mediation institution;
f. The complaint filed is civil in nature;
g. The complaint submitted has never been facilitated by OJK; And
h. Complaint settlement submission shall not exceed 60 (sixty) working days from the date of the complaint resolution letter submitted by the Financial Services Business actor to the Consumer.

The OJK will select a facilitator to handle complaint resolution. The OJK agrees to facilitate the facilitation process between consumers and Financial Services Businesses as outlined in the facility agreement, which includes: a. agreement to choose complaint settlement facilitated by OJK; and b. approval to obey and comply with the facilitation rules set by OJK.[19]

Consumers and Financial Services Business Actors' agreement as a consequence of the facilitation process is specified in a Deed of Agreement

[19] Rustam Magun Pikahulan, "Implementasi Fungsi Pengaturan Serta Pengawasan Pada Bank Indonesia Dan Otoritas Jasa Keuangan (OJK) Terhadap Perbankan," *Jurnal Penegakan Hukum Dan Keadilan* 1, no. 1 (2020): 41–51, https://doi.org/10.18196/jphk.1103.

signed by Consumers and Financial Services Business Actors. The facilitation process is implemented up to the signing of the Deed of Agreement within 30 (thirty) days after the Consumer and Financial Services Business Actor signs the facilitation agreement. If no agreement is reached between the Consumer and the Financial Services Actor, the dispute is documented in the minutes of the OJK facilitation, which are signed by both the Consumer and the Financial Services Actor.

According to the requirements outlined above, Financial Services Business Actors (PJUK) must first settle customer concerns. If no agreement is achieved, the Consumer and PJUK can settle the case outside of court or in court. Dispute settlement outside of court is handled through Alternative Dispute settlement (ADR) institutions listed on the OJK's List of Alternative Dispute Resolution Institutions. The Alternative Dispute Resolution Institution's ruling must be implemented by PUJK.[20]

OJK, in accordance with Financial Services Authority Regulation Number 1/POJK.07/2014, provides opportunities for resolving consumer complaints through Alternative Dispute Resolution Institutions, which are institutions that resolve disputes outside of court. This is part of a series on consumer protection in the resolution of complaints by financial institutions. Consumers and Financial Services Institutions frequently fail to achieve an agreement. This institution is expected to be able to handle conflicts swiftly, cheaply, fairly, and efficiently.

Financial Services institutions form Alternative Dispute Resolution Institutions, which are coordinated by organisations from each financial services sector. Alternative Dispute Resolution Institutions must be established by December 31, 2015, for the financial industry, financing, guarantees, and grievances. If no Alternative Dispute Resolution Institutions have been established, consumers can make requests to OJK for dispute resolution facilitation. OJK provides dispute resolution services in

[20] Hakim and Trivilta, "Prinsip Mengenal Nasabah, Penerapan, Prinsip Kehati-Hatian, Lembaga Perbankan."

compliance with the terms of OJK legislation governing Consumer Protection in the Financial Services Sector.

Alternative Dispute Resolution Institutions included in OJK's List of Alternative Dispute Resolution Institutions include Alternative Dispute Resolution Institutions that:[21]

a. Provides dispute resolution services such as mediation, adjudication, and arbitration.
b. Regulates dispute resolution services, dispute resolution methods, dispute resolution costs, dispute resolution period, conflict of interest and affiliation requirements for mediators, adjudicators, and arbitrators, as well as a code of ethics for mediators, adjudicators, and arbitrators.
c. In each regulation, applying the principles of accessibility, independence, justice, efficiency, and effectiveness.
d. Having the resources to provide conflict resolution services, and
e. Created by a financial services institution that is coordinated by an association and/or created by an entity that performs the function of a self-regulatory organization.

Mediation is a method of resolving disputes through a third party designated by the conflicting parties to assist the opposing parties in reaching an agreement. Adjudication, on the other hand, is a way of settling conflicts through a third party designated by the disputing parties to make decisions on disputes that emerge between the parties involved. Financial firms are bound by adjudication rulings. If the Consumer agrees with the adjudication judgment but the Financial Services Institution does not, the Financial Services Institution is required to follow through on the decision. In contrast, even if the Financial Services Institution confirms the adjudication judgment, it cannot be implemented if the Consumer does not

[21] Maimun and Dara Tzahira, "Prinsip Dasar Perbankan Syariah," *Al-Hiwalah: (Sharia Economic Law)* 1, no. 1 (2022): 130–33.

agree with it. Meanwhile, arbitration is a method of resolving a civil disagreement outside of court based on a written arbitration agreement signed by the parties to the issue.

Based on the foregoing, we can conclude that the OJK issued an OJK Regulation requiring the establishment of an Alternative Dispute Resolution Institution in the banking sector. Not only must banks provide financial mediation, but they must also provide alternative dispute resolution in the form of mediation, adjudication, and arbitration.[22] A series of customer protection systems will increase customer trust in banks and have a positive impact on the development of the banking industry in realizing system financial growth sustainably and stably with the availability of a dispute resolution mechanism in the form of mediation, adjudication, and arbitration that applies the principles of accessibility, independence, fairness, efficiency, and effectiveness.

Furthermore, the transfer of functions, duties, and regulatory and supervisory authority from the BI to the OJK has resulted in a comprehensive and systematic transformation of Indonesia's regulatory and supervisory system for the financial services sector, including legal protection for bank customers. The Financial Services Authority Regulation number: 01/POJK.07/2014 mandates the establishment of Alternative Dispute Resolution Institutions (LAPS) in each financial services industry. Based on this, the banking sector's organization formed the Indonesian Banking Dispute Resolution Alternative Institution (LAPSPI), which became operational in early 2016.

Dispute resolution outside of court, as mandated by Article 2 POJK Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, is carried out through LAPSPI as an alternative dispute resolution institution in the banking sector that is registered on the OJK's LAPS list. Customers and banks can choose the

[22] Oksana Melenko, "Mediation As An Alternative Form Of Dispute Resolution: Comparative-Legal Analysis," *European Journal of Law and Public Administration* 7, no. 2 (2020): 46–63.

agreed forms of dispute resolution and are willing to follow procedures as stipulated in laws and regulations, but not all disputes can be resolved through LAPSPI, which in this case must meet the LAPSPI settlement requirements.

The provisions of the Indonesian Alternative Banking Dispute Resolution Institution Regulation No. 07/LAPSPI-PER/2015 concerning Mediation Rules and Procedures, the Indonesian Banking Dispute Resolution Alternative Institution Regulation No. 08/LAPSPI/PER/2015 concerning Adjudication Rules and Procedures, and the Indonesian Banking Dispute Resolution Alternative Institution Regulation No. 09/LAPSPI-PER/2015 concerning Adjudication Rules and Procedures.

The issues that can be addressed by LAPSPI must be civil conflicts between parties involved in banking. LAPSPI uses Mediation, Adjudication, and Arbitration to resolve banking disputes. LAPSPI's dispute resolution procedures can be carried out in two (two) methods. First, the parties can pick Mediation as the initial dispute settlement method; the outcome of this Mediation is a Peace Agreement, which can be strengthened into a Peace Deed to be enforced.[23] If the Mediation fails, the parties may resort to Adjudication. If the applicant accepts the adjudication judgment in its whole, the decision is final and binding on the parties, and the decision can be executed. Second, the parties might opt for arbitration as the first and final dispute resolution method. To be enforceable, the Arbitration Award must first be lodged with the district court. This registration is the most significant aspect in the implementation of the Arbitral judgment since it prevents the decision from being enforced if it is not registered.

Thus, the development of LAPSPI can meet the community's need for a rapid, affordable, fair, and effective dispute resolution process outside of the court in the sphere of banking sector financial services, both conventional and sharia. Furthermore, settling financial disputes outside of

[23] Ayup Suran Ningsih, "Alternative Dispute Resolution as Soft Approach for Business Dispute in Indonesia," *2nd International Conference on Indonesian Legal Studies (ICILS 2019)* 363, no. Icils (2019): 26–33, https://doi.org/10.2991/icils-19.2019.6.

court might be preferable since it takes into account the specifics of the situation by prioritizing independence and compliance with laws and regulations.

Optimizing The Role Of Mediation In Banking Dispute Resolution In Indonesia

Gustav Radbruch's theory of legal ideals (rechtsidee) is utilized to study the ideals of optimizing the empowerment of mediation institutions in settling financial disputes in Indonesia. The theory of legal ideals can be viewed as a mental construct required to lead the law toward the values desired by society. Gustav Radbruch believes that legal ideals serve as a regulatory and constitutive benchmark. The meaning of the ensuing legal products will be lost in the absence of legal ideas.[24]

According to Gustav Radbruch, this can be understood through text The original is as follows: *De rechtidee niet alien a/seen regulatieve maatstaaf fungeert (om het positieve recht op zijn rechtvaardigheid op ojirechtvaardigheid to toetsen), maar tegelijk als constitutive grondslag (zonder welke het recht, dat de rechtidee der gerechtighoit de grondslag vormt van recht, dat met de idee in strijd kan zijn (onrechtvaardigrecht).*[25] (The right ideal is not something foreign or merely a regulatory benchmark (in positive rights), but at the same time reflects a constitutive basis which without the legal essence of its formation can conflict with the legal ideal and its legal form (unjust law)).

Based on the explanation above, each formation process and enforcement and changes to be made to the law must not conflict with the agreed legal ideals. Therefore, Hans Kelsen calls the legal ideal a grundnorm or basic norm.[26] Gustav Radbruch further stated that there are 3 (three)

[24] Esmi Warasih, *Pranata Hukum Sebuah Telaah Sosiologi* (Semarang: PT Suryadaru Utama, 2010).
[25] I Dewa Gede Oka Nuryawan, "Rekonstruksi Perjanjian Kerja Bersama Dalam Undang-Undang Nomor 13 Tahun 2003 Tentang Ketenagakerjaan," *Jurnal Analisis Hukum* 1, no. 2 (2020): 255, https://doi.org/10.38043/jah.v1i2.415.
[26] Mario Julyano and Aditya Yuli Sulistyawan, "PEMAHAMAN TERHADAP ASAS KEPASTIAN HUKUM MELALUI KONSTRUKSI PENALARAN POSITIVISME HUKUM," *Jurnal Crepido* 01 (2019): 13–22.

basic values of law which are then known as legal ideals. These three values are certainty, justice, and usefulness. As basic legal values (legal principles), these three basic legal values are placed as the first reference in the formation of statutory regulations.[27]

According to Lawrence M. Friedman, the legal system itself influences law enforcement. Lawrence M. Friedman, in his book American Law An Introduction, put forward the Legal System theory. "A legal system in actual operation is a complex organisme in which structure, substance, and culture interact. A legal system is the union of "primary rules" and "secondary rules." Primary rules are norms of behavior, secondary rules are norms about those norms- how to decide whether they are valid, how to enforce them, etc".[28]

a. Legal structure

   Legal structure is an institution created by the legal system with various functions in order to support the operation of the system.[29]

b. Legal substance

   "The substance is composed of substantive rules and rules about how institutions should behave. Structure and substance are real components of a legal system, but they are at best a blueprint or design, not a working machine."[30]

c. Legal culture

   "It is the element of social attitude and value. The phrase "social forces" is itself an abstraction; in any event have needs and make

[27] Ekberth Vallen Noya and Ade Walakutty, "Hukum Berparadigma Cita Hukum Indonesia Demi Tercapainya Keadilan," *SANISA Jurnal Kretivitas Mahasiswa Hukum* 2, no. 2 (2022): 69–80.
[28] Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russel Sage Foundation, 1975).
[29] Farida Pahlevi, "Pemberantasan Korupsi Di Indonesia Perspektif Legal System Lawrence M. Freidmen," *El-Dusturie* 1, no. 1 (2022), https://doi.org/10.21154/eldusturie.v1i1.4097.
[30] Slamet Tri Wahyudi, "Problematika Penerapan Pidana Mati Dalam Konteks Penegakan Hukum Di Indonesia," *Jurnal Hukum Dan Peradilan* 1, no. 2 (2012): 207, https://doi.org/10.25216/jhp.1.2.2012.207-234.

demands; these sometimes do and sometimes do not invoke legal process, depending on the culture."[31]

Bank Indonesia was the first to take the initiative to regulate the construction of a banking mediation organization in order to resolve financial disputes through mediation. Then, in 2006, Bank Indonesia authorized the establishment of an independent Banking Mediation Institution constituted by a banking association in Article 3 paragraphs (1) and (2) of Bank Indonesia Regulation Number: 8/5/PBI/2006, Concerning Banking Mediation, no later than December 31, 2007. Furthermore, Article 3 paragraph (4) of the Banking Mediation PBI says that the banking mediation function shall be carried out by Bank Indonesia as long as an independent banking Mediation organization has not been established.[32] However, until 2008, there was no independent banking mediation agency mandated by the Banking Mediation PBI. This compelled Bank Indonesia to revise its Banking Regulations.

Financial mediation as an alternative to settling financial disputes is a simple, low-cost, and quick way to resolve issues that arise between clients and banks. Furthermore, the outcome of mediation, which is an agreement between the client and the bank, is regarded as an effective type of problem-solving because both the customer's interests and the bank's reputation may be preserved. The following are the banking mediation requirements for financial disputes:[33]

a. Written submission by the customer/customer representative, backed by supporting documentation.
b. Tried to work it out with the bank.

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[31] Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68, https://doi.org/10.21274/legacy.2021.1.1.46-68.

[32] Asmaharani Mellinia Harahap and Adawiyah Nasution, "SETTLEMENT OF CIVIL DISPUTES BETWEEN CUSTOMERS WITH BANK THROUGH BANKING MEDIATION (Case Study of Bank Al Washliyah Medan)," *Fox Justi : Jurnal Ilmu Hukum* 13, no. 1 (2022): 69–74, https://doi.org/10.58471/justi.v13i1.439.

[33] Melenko, "Mediation As An Alternative Form Of Dispute Resolution: Comparative-Legal Analysis."

c. Is not currently in process, has never been decided by an arbitration or judicial institution, and no agreement has been facilitated by another mediation institution.
d. Civil disputes that have the potential to cause clients financial losses as a result of bank errors or negligence.
e. b. The maximum monetary claim is IDR 500,000,000 (five hundred million rupiah), and the loss is not insignificant.
f. Has never been processed through Bank Indonesia's banking mediation.
g. Received a maximum of 60 (sixty) calendar days from the date of the bank's complaint resolution letter to the customer.

Article (1) number 5 of Bank Indonesia Regulation number: 8/5/PBI/2006 states that mediation is a dispute resolution process that involves a mediator to assist the parties to the dispute in reaching a settlement in the form of a voluntary agreement on part or all of the disputed issues. The agreement is specified in the deed of agreement, which is a written document containing a final and binding agreement for both the consumer and the bank. Meanwhile, the mediator serves as an impartial third party in assisting with mediation implementation.

The law in various aspects, including aspects of implementation, application, and/or enforcement of law is always influenced by various factors. As a legal system, according to Lawrence M. Friedman, there are three main elements in law, namely substantive law, legal structure, and legal culture.[34] The role of the Banking Mediation Institution is influenced by the substantive law, whether the arrangements of the Banking Mediation Institution are adequate, in the sense of binding the parties to the dispute. Furthermore, public understanding of Mediation Institutions, and then the organization of Banking Mediation Institutions, including the culture of the

[34] L. M. Friedman, *The Legal System: A. Social Perseptifve* (New York: Russel Sage Foundation, 1975).

banking community. Therefore, there are several things that can optimize the role of Banking Mediation Institutions in resolving banking disputes.

1. Strengthening Regulations on Banking Mediation Institutions

Currently, Banking Mediation Institutions are regulated in Financial Services Authority Regulation Number 1/Pojk.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The effectiveness of this Financial Services Authority regulation cannot be maximized, where the Mediation Institution as an alternative is not imperative, so that not all disputes in the Financial Services sector, especially banking disputes, are not always resolved through the Banking Mediation Institution.[35] There needs to be a strengthening of norms in laws and regulations in the banking sector. Law as an instrument that can bind everyone, has not yet been fully discovered in banking activities.[36] In Law Number 10 of 1998 concerning amendments to Law Number 7 of 1992 concerning Banking, mediation institutions as an instrument for resolving banking disputes are not explicitly regulated. In various other legal fields such as intellectual property rights, bankruptcy, consumer affairs, etc., there are binding regulations regarding dispute resolution institutions. The law is a foothold for people who have disputes regarding which institutions can resolve them.[37]

2. Legal Education for the Community

The factor that influences the weak role of mediation in banking disputes is the public's lack of understanding of mediation institutions. The concept of mediation has actually become part of people's lives, because since before the enactment of the provisions of the law regarding mediation

[35] Zakia Vonna, Sri Walny Rahayu, and M Nur, "The Mediation Process in Sharia Economic Dispute Resolution Through the Religious Court in Indonesia," *IOSR Journal Of Humanities And Social Science (IOSR-JHSS* 24, no. 9 (2019): 10, https://doi.org/10.9790/0837-2405053947.

[36] Bondan Seno Aji, Made Warka, and Evi Kongres, "Credit Dispute Resolution through Banking Mediation during Covid-19 Pandemic Situation," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 4, no. 2 (2021): 1618–27, https://doi.org/10.33258/birci.v4i2.1823.

[37] Suran Ningsih, "Alternative Dispute Resolution as Soft Approach for Business Dispute in Indonesia."

institutions, Indonesian people have understood peace. The legal concept of mediation has become part of positive law with the publication of Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration. Specifically regarding banking disputes, the Banking Mediation Institute was introduced, after the enactment of Bank Indonesia Regulation Number: 8/5/Pbi/2006 concerning Banking Mediation which was later amended by Bank Indonesia Regulation Number 10/1/PBI/2008 concerning Amendments to Bank Indonesia Regulation Number: 8/5/Pbi/2006 Concerning Banking Mediation.[38] Terakhir dengan adanya Peraturan Otoritas Jasa Keuangan Nomor 1/Pojk.07/2014 Tentang Lembaga Alternatif Penyelesaian Sengketa Di Sektor Jasa Keuangan. Dalam praktek sengketa perbankan tidak selamanya diselesaikan melalui Lembaga mediasi Perbankan.[39] Formally conceptually, the public does not understand the role of banking mediation institutions. Legal education for the community is something that needs to be carried out continuously and sustainably, if necessary it becomes a government program whose implementation is handed over to non-governmental organizations or non-governmental organizations (NGOs). Basically, with the enactment of Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid, the community has received facilities to receive legal services either directly in the event of a case or through legal education including legal counseling carried out by legal aid providers, or those who called the Legal Aid Organization.[40] However, material regarding the role of Banking Mediation Institutions has never been provided to the public. Legal education through legal counseling regarding the role of Banking Mediation Institutions encourages the public to understand and implement banking dispute resolution through banking mediation institutions. Implementation of legal

[38] G. B. Indonesia, "Peraturan BI Nomor 10/1/PBI/2008 Tentang Mediasi Perbankan" (2008).
[39] D. Komisioner and O. Jasa, "Otoritas Jasa Keuangan Republik Indonesia" (2015).
[40] "Undang Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum" (n.d.).

education carried out by Legal Aid Organizations which may be able to collaborate with Bank Indonesia so that public understanding is maximized.

3. Strengthening the Organization of Mediation Institutions

Based on Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration, Mediation is an alternative for resolving civil disputes through a mediator, where the concept of peace is the main benchmark. The emphasis in resolving mediation is a win-win solution, not a win-lose solution where the concept of peace is the initiative of the disputing parties.[41] The role of a mediator is important, being able to bridge two parties with opposing opinions and initiatives. At the banking world level, mediators are often carried out by banks, namely Bank Indonesia, whose banking understanding capabilities are beyond doubt. This institution is less than optimal because it is not independently an independent Banking Mediation Institution. The concept of an independent institution is important so that it has sufficient concentration and focus in resolving various banking disputes. On the other hand, from a professional aspect, banking mediators have not received legal recognition like the profession of advocates, notaries, doctors, pharmacists, etc.

4. Increasing Community Legal Awareness (Legal Culture)

Soerjono Soekanto stated that law enforcement is influenced by various factors, including the legal factors themselves, community factors, law enforcement factors, and legal culture factors.[42] Law enforcement is not always the case. through the state judicial process, but can use alternative dispute resolution such as mediation. The role of mediation in dispute resolution is also influenced by the level of public legal awareness. In principle, Indonesian society has a high level of tolerance which can be the basis for peace efforts if disputes occur. This principle becomes disturbed

[41] Sudiyana, "Pemberdayaan Peran Lembaga Arbitrase Dalam Penyelesaian Sengketa Bisnis Di Indonesia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 4, no. 1 (2017): 122–42, https://doi.org/10.22304/pjih.v4n1.a7.
[42] Soerjono Soekanto, *Faktor Faktor Yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajagrafindo Persada, 1983).

when there is a shift in the legal paradigm from community law (natural law) towards positive law (state law), marked by codifications.[43] Restoring the paradigm of peace as a legal symbol of society seems to be more difficult. Hard work is needed from various parties, so that there is an increase in aspects of legal awareness based on understanding mediation.

Conclusion

In the provisions of laws and regulations both in the Civil Code, the Law on Banking, Law Number 30 of 1999 concerning Alternative Dispute Resolution and Arbitration, including technical regulations at the Judicial level such as Supreme Court Regulation Number 1 of 2016 regarding Mediation, it has been regulated regarding the Mediation settlement mechanism. There are various factors that affect mediation institutions that cannot be carried out optimally. It is necessary to make a social-comprehensive legal breakthrough so that mediation institutions can be empowered more optimally in resolving banking disputes.

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[43] S. Wignjosoebroto, *Pergeseran Paradigma Dalam Kajian-Kajian Sosial Dan Hukum* (Malang: Setara Press, 2013).

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“Injustice anywhere is a threat to justice everywhere”.

Martin Luther King Jr.

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