

CHAPTER I INTRODUCTION

A. Background

The role of banks in advancing the economy of a country is enormous. Almost all sectors related to various financial activities, always need bank services. Therefore now and in the future people will not be able to escape from the banking world. If you want to run a financial activity, both individuals and institutions, both social and corporate.

Banks have a very important role in the economic activities of a country. The more advanced a country then the role of a bank in economic activities getting bigger. So, it can be interpreted that the bank is needed by the government and society.

The community deals with banking institutions due to trust, as well as banking institutions to the community. People believe that banking will provide benefits to its customers either in the form of material such as interest or non-material such as security of valuables (funds) deposited or stored in the Bank. On the other hand, banks also feel confident and believe that their customers come from people who have good reputation and credibility.

According to Muhammad Djumhana¹, "It is said that if this mutual trust disturbed will be able to influence the attitude and actions of society and bank in order to realize the interaction of both." For example when

¹ Muhammad Djumhana, 1996, "*Hukum Perbankan di Indonesia*", Bandung, Citra Aditya Bakti, p.114

people hear bad news about the bank, the news will be a bit much influence public confidence against the bank. Vice versa, if the reputation and credibility of the customer is damaged, then it also may influence bank confidence to the customer. Damage to bank confidence to the customer will affect the treatment of the bank to the customer concerned, so there is often a dispute between the bank and the customer. The occurrence of this dispute is often caused if one party does not run a deal that has been made well, or because there are parties that breach the contract, thus harming the other party.

A dispute, a situation where two or more parties are faced with a difference of interest, will not develop into a dispute if the injured party harbors only his dissatisfaction or concern. A conflict turns or develops into a row whenever a disadvantaged party has expressed his dissatisfaction or concern, either directly to the party who is considered the cause of the loss or to the other party.²

For example, if a customer feels less satisfied with the bank's service then complains to the bank, the bank does not respond to the customer's complaint or does not obtain an internal settlement agreement. So, it can lead to conflict or dispute between the customer and the bank. Conversely, if the customer does not execute the agreement that has been made with the bank, then the bank gives a warning, but the customer does

² Rachmadi Usman, 2013, *Pilihan Penyelesaian Sengketa Di Luar Pengadilan*, Bandung : PT. Citra Aditya Bakti, p. 1

not give a response or does not have goodwill to solve it then this can also be a dispute.

Settlement of disputes between banks and customers can be done through 2 (two) processes, namely: dispute resolution through courts and dispute resolution outside the judiciary. Non-court settlement of disputes between banks and customers may be made through negotiation, conciliation, mediation and arbitration as provided for in Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution.

The enactment of Law No. 21 of 2011 on the Financial Services Authority (OJK Law), which was enacted on November 22, 2011. The regulation and supervision of the banks originally in BI as the central bank was transferred to the Financial Services Authority (OJK), as well as The function of the banking mediator who originally resides in BI is transferred to OJK. OJK is an independent institution and free from the interference of other parties, which has the functions, duties or authority of regulation, supervision, inspection and investigation in the financial services sector.

Based on Article 4 of the OJK Law, one of OJK's duties is to provide protection to consumers and/or the community. In order to provide consumer protection, OJK has issued OJK Regulation (POJK) Number 1/POJK.07/2013 dated 26 July 2013 on Consumer Protection in Financial Services Sector. POJK applies the principle of balance between

developing sustainable financial services sector and jointly providing protection to consumers and/or community as customers.

For dispute resolution of products and/or services of business Service Provider out of court, OJK has issued POJK Number 01/POJK.07/2014 dated January 16, 2014 on the Alternative Dispute Settlement Institution (LAPS) in the financial services sector. With the enactment of POJK Number 1/POJK.07/2013 on Consumer Protection of Financial Services Sector and POJK Number 01/POJK.07/2014 on the Alternative Dispute Settlement Institution (LAPS) in the financial services sector, PBI Number 8/5/PBI/2006 jo. PBI Number 10/1/PBI/2008 concerning the amendment of PBI Number 8/5/PBI/2006 concerning Banking Mediation is not enforced. As mandated in POJK Number 1/POJK.07/2013 dated 26 July 2013 on Consumer Protection of Financial Services Sector and POJK Number 01/POJK.07/2014 on the Alternative Dispute Settlement Institution (LAPS) in the financial services sector, in the context of safeguard and customer empowerment by Financial Service Authority is realized with the presence of infrastructure to handle and resolve various complaints and customer complaints.

Then on April 28, 2015, the association in the banking sector, namely the National Banks Association (Perbanas), the Association of State-Owned Banks (Himbara), the Association of Regional Development Banks (Asbanda), the Indonesian Sharia Banks Association (Asbisindo), International Banks Association of Indonesia (Perbina), and the

Association of Indonesian Rural Banks (Perbarindo) established the Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI) which officially operated in early 2016. The agency serves to resolve banking disputes. LAPSPI has 3 (three) dispute resolution forums namely Mediation, Arbitration and Adjudication.

During the year 2016 there are generally 9 (nine) cases that go into LAPSPI, but of the 9 cases none meet the criteria, so the case is rejected. For the 9 cases, the reasons for the rejection are as follows³:

1. 5 (five) disputes because they have not been through the internal settlement process through the Bank's Internal Settlement Alternative.
2. 1 (one) dispute because it has been handled by another dispute settlement institution.
3. 1 (one) dispute because the customer can not be contacted.
4. 1 (one) dispute because the Bank has not provided confirmation
5. 1 (one) dispute as the customer is making a new claim.

From these data, it can be seen that many parties, especially customers who do not know the mechanism of dispute resolution banking through LAPSPI, especially arbitration, because arbitration becomes one of the alternative solutions for banking disputes. However, there has been no literature discussing the settlement of banking disputes through Arbitration in LAPSPI. Whereas there are various reasons for arbitration to be chosen as an attempt to resolve the dispute, namely the assumption

³ Direct interview with Mr. Aji as Staff of Senior Analyst Senior at the Directorate of Learning Center, Financial Service Authority, held in the Menara Radius Prawiro Building A Bank Indonesia. Held on May 30th 2017, 10.00 am

that dispute settlement through the judiciary takes a long time and a great cost, due to the long judicial process from the first to the Supreme Court. Another reason is that dispute resolution through the judiciary will seek out who is wrong and who is right, so that the result will strain the relationship between the two parties. The settlement of disputes through arbitration is deemed to have produced a compromise decision, which is acceptable to both parties to the dispute. A very important reason for the parties choosing to resolve disputes through arbitration is confidentiality. Arbitration forums are usually used by businesses/companies and banks with large disputes.

Based on the background, with the new institution, it is interesting to analyze the settlement of banking disputes through Arbitration forums in alternative dispute settlement institutions. Therefore, the researcher is interest to do research in the topic with the "Banking Dispute Resolution through Arbitration at The Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI)".

B. Research Problems

1. How is the dispute settlement mechanism of banking through Arbitration in the Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI)?
2. What is the legal effect of Arbitral Awards in Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI) toward the Parties?

C. Objectives of Research

The purpose of this research is as follows:

1. To know and explain the mechanism of dispute resolution of banking through arbitration in Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI).
2. To know and explain the legal effect of Arbitral awards in Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI) for parties.

D. Benefits of Research

The benefits of this research are as follows:

1. Theoretical benefits
Expanding the author's knowledge in the field of civilization, especially about dispute settlement between the bank and the customers, and its development in line with the development of banking in Indonesia.
2. Practical Benefits
 - a. The results of this paper is expected to contribute thoughts in a scientific work in the form of a thesis, which can be useful for people who read this thesis about the mechanism of dispute settlement between banks with customers through the Alternative Institution of Bank Indonesia Settlement Disputes.

- b. The results of this writing can be used as input for the Indonesian Banking Dispute Settlement Alternative Institution in resolving disputes between banks and customers.