CHAPTER II

LITERATURE REVIEW

A. Overview of Disputes, Banking and Customers

1. Definition of Disputes

Definition of dispute under article 1 paragraph (13) of the Regulation of the Financial Services Authority No. 1/POJK.07/2014 is a dispute between the Customer and the Financial Institution in the placement of funds by the Consumer of Financial Services Institution and/or utilization of services and/or products of Financial Services Institution after going through complaint resolution process by Financial Services Institution.

2. Definition of Banking

Definition of Bank according to Article Article 1 paragraph (2) Law No. 10 of 1998 is an entity that collects funds from the public in the form of deposits, and distribute it to the public in the form of credit and/or other forms in order to improve the standard of living people.

Bank derives from the word *Banco*, *Banco* meaning bench. Bench or bankers are bankers who serve the operations of the bank to its customers. The Bank is a financial institution that collects funds from the public in the form of deposits, as a place to save money or invest for the public to security, make investments, and facilitate

payment transactions. Bank provides a means of savings which varies depending on the bank concerned.[4]

Some scholars also expressed his opinion on the definition of a bank. Although each scholar expressed his opinion, it basically refers to the duties and functions of the bank. Here are some quotations and opinions from some scholars.

According to O.P. Simorangkir, "the bank is one of the financial institutions business entity that aims to provide credit and services. Their credit granting it performed well with its own capital and to circulate the new payment instruments in the form of money."[5]

According to the "*Dictionary of Banking and Financial Service (Jerry Rosenberg)*", "Bank is an institution that has the main functions including: (a) accept demand deposits, time deposits and pay on the basis of documents drawn on the person/institution; and (b) discounting securities, lending, and invest the funds in the form of securities."[6]

According to Abdurrahman in the "*Ensiklopedia Ekonomi Keuangan dan Perdagangan"*, "the bank is a financial institution that is carrying out various services, such as providing loans, circulating

[4] Dadang Husen Sobana, 2016, *Hukum Perbankan di Indonesia*, Bandung, Pustaka Setia. p. 5
[5] Zainal Asikin, 2015, *Pengantar Hukum Perbankan Indonesia*, Jakarta, PT RajaGrafindo Persada. p. 25
[6] Zulfi Diane Zaini, 2012, *Independensi Bank Indonesia dan Penyelesaian Bank Bermasalah*, Bandung, CV Keni Media,. p. 52

currency, oversee the circulation of currency, store valuable objects, business finance companies, and others."[7]

According to Lukman Denda Wijaya, "The bank is a financial institution whose main duty is a financial intermediary (financial intermediaries), which channeled funds from the excess funds (idle fund/surplus units) to those who need funds or lack of funds (deficit units) at the specified time."[8]

From the definitions, it can be concluded that the bank is a financial institution whose activities are as follows:[9]

a. Collecting funds from the public in the form of deposits, which aims is for security, and make investments to earn interest and facilitate payment transactions. Type of savings offered depends on the bank in question, such as demand deposits, time deposits, and saving deposits.
b. Channeling funds to the community, namely providing loans to the public or providing funds to people who need them. Loans or credits granted are divided into different types according to customer wishes. Before lending, banks assess the feasibility of creditors to approve or reject the credit application. This is done so that the banks avoid losses due to bad credit.
c. Providing bank services, such as remittance (transfer), collection of securities that came from within the city (Clearing), collection

[7] Dadang Husen Sobana, *Op.cit*, p. 14
[8] Lukman Denda Wijaya, 2001, *Manajemen Perbankan*, Jakarta, Ghalia, p. 25
[9] Dadang Husen Sobana, *Op.cit*, p. 15

of securities that came from outside the city (*inkaso*), letter of credit (L/C) safe deposit box, bank guarantees, bank notes, traveler checks, and other services.

3. Definition of Customers

Article 1 paragraph (16) of the Law No.10 of 1998 is introduced into the formulation of the customers that the customer is using the services of the bank. The formulation is then detailed in the next point, which is as follows:

a. Depositors are customers who place their funds in the banks in the form of bank deposits based on an agreement with the customer.[10]
b. Debtors are customers who obtained credit facilities or financing based on *Syariah* Principles or equivalent to the bank under the agreement with the customer.[11]

4. The Relationship between Bank and Customer

The legal relationship between the customer and the bank is based on an agreement between them. As regulated in Article 1339 jo Article 1347 of the Civil Code, a treaty is not only binding on things expressly stated therein, but also for anything that is by nature of the treaty, necessitated by propriety, custom or law. Thus, in a legal relationship between the customer and the bank, the parties are obliged

[10] Article 1 paragraph (17) Law of Republic Indonesia Number 10 Year 1998 on Amendment to Law Number 7 of 1992 on Banking.
[11] Article 1 paragraph (18) Law of Republic Indonesia Number 10 Year 1998 on Amendment to Law Number 7 of 1992 on Banking.

to exercise their respective rights and obligations, both on matters expressly stipulated in written agreements, as well as in accordance with the applicable and accepted customs.[12]

B. Overview of Alternative Dispute Resolution (ADR)

1. Definition of Alternative Dispute Resolution (ADR)

The definition of Alternative Dispute Resolution (hereinafter referred to as ADR) under article 1 paragraph (10) of Law No.30 of 1999, reads: "Alternative dispute resolution is an institution for settling disputes or differences of opinion in a procedure agreed upon by the parties, the settlement out of court by way of consultation, negotiation, mediation, conciliation or expert assessment."

There are two different understandings of the meaning of ADR. First, ADR is defined as an alternative to litigation and the second, ADR is defined by alternative to adjudication. Selection of one of the two concepts are different implications. If one assumes that the reference (alternative to litigation), then the whole mechanism of dispute resolution outside the court, including arbitration is part of ADR. However, if the ADR is defined as an alternative to adjudication, the only consensus or cooperative mechanism that included ADR. While adjudicative arbitration is not included, because

[12] Wafiya, "*Perlindungan Hukum bagi Nasabah yang Mengalami Kerugian Dalam Transaksi Perbankan melalui Internet",* http://www.jurnal.unsyiah.ac.id/kanun/article/view/6198 accessed on August 31st 2017, 9.45 am

just like the courts are likely to produce the decision with the winning solution to lose.[13]

In the views of the Law No.30 of 1999, then Indonesia is also one of the adherents of the second view, since the law explicitly separating the terms of arbitration and alternative dispute resolution.[14]

In addition based on formal understanding contained in the legislation, there is also the opinion of the expert regarding the definition of alternative dispute resolution. Some experts define ADR, for example Stanford M. Altschul argues that the ADR is "A trial of a case before a private tribunal agreed to by the parties so as to save legal costs, avoid publicity, and avoid lengthy trial delays."[15]

While Phillip D. Bostwick argues that ADR is as follows;

"A set of practices and legal techniques that aim:

a. to permit legal disputes to be resolved outside the courts for the benefit of all disputants
b. to reduce the cost of conventional litigation and the delay to which it is ordinary subjected;
c. to prevent legal disputes that would otherwise likely to brought to the courts."[16]

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[13] Dwi Rezki Sri Astarini, 2013, *Mediasi Pengadilan Salah Satu Bentuk Penyelesaian Sengketa Berdasarkan Asas Peradilan Cepat, Sederhana, Biaya Ringan,* Bandung, PT.Alumni. p.8
[14] *Ibid*
[15] Frans Hendra Winarta, 2013, *Hukum Alternatif Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional,* Jakarta, Sinar Grafika, p.13
[16] *Ibid, p.*14

The definition of ADR according to Susanti Adi Nugroho is dispute resolution or disagreement institutions through the procedures agreed upon by the parties, namely non-court settlement by means of consultation, negotiation, mediation, conciliation or expert judgment. Thus, an alternative dispute resolution means an institution of non-court dispute resolution under the agreement of the parties to the exclusion of a litigation settlement in court.[17]

Frans Hendra Winata, defines "ADR (Alternative Dispute Resolution) as institutions of dispute resolution outside the court by agreement of the parties to the exclusion of dispute settlement through litigation in the courts."[18]

2. Legal Sources of Alternative Dispute Resolution

   Legal Sources of Alternative Dispute Resolution are:

   a. Law No.30 of 1999 on Arbitration and ADR;
   b. Law no. 4 of 2004 on Judicial Power (Act No. 14 of 1970 *jo* Law No.35 of 1999 on the Basic Provisions of Judicial Power);
   c. Law No.5 of 1968 on the Ratification of the World Bank Convention;
   d. Presidential Decree No.34 of 1981 on the ratification of the New York Convention 1958;

[17] Susanti Adi Nugroho, 2015, *Penyelesaian Sengketa Arbitrase dan Penerapan Hukumnya*, Jakarta, Prenadamedia Group, p. 1
[18] Frans Hendra Winarta, O*p.Cit*., p.15

3. Types of Alternative Dispute Resolution

Types of alternative dispute resolution as set out in Article 1 paragraph (10) of Law No.30 of 1999 can be selected either by the businesses and the community at large to resolve civil disputes they experienced. Here are the types of the ADR.

a. Consultation

Law No. 30 of 1999 does not provide an understanding of consultations. According to Black's Law Dictionary definition of the consultation is "art of consulting or conferring; e.g. patient with doctor, client with lawyer, Deliberation of persons on some subject." From these formulations we know that in principle the consultation is an act that is personal between a particular party, called the client and another party which is a party consultants, who give their opinions to the client to meet his client's needs and requirements. Client is free to determine its own decision that he will take for his own benefit, however. It is possible that the client will be able to use the opinions submitted by consultants. In this case the consultant's role is only to give an opinion (the law) as requested by his client, whose next decision regarding the dispute resolution will be taken solely by the parties.[19]

[19] Fadia Fitriyanti, 2013, *Arbitrase Nasional & Arbitrase Syariah Suatu Kajian Perbandingan*, Yogyakarta, Laboratorium Fakultas Hukum UMY. p. 61

b. Negotiation

Similarly, negotiations formulation is implicitly written in article 6 paragraph (2) Law No.30 of 1999 basically the parties can and have the right to settle its own disputes arising between them. An agreement on the next settlement should be enshrined in written form agreed to by the parties.[20]

With reference to the formula set out in article 5 of Law No.30 of 1999, it can be construed that basically anything that according to the law can be held peace by negotiation. This brings the consequence that the negotiation as well as peace can only be done if the negotiating parties have the power to relinquish his rights over the things contained in the written agreement. With the release of all rights and demands set forth in the negotiated agreement should be interpreted with the release of rights simply and all the rights and demands of the dispute has to do with the cause of the negotiations.[21]

c. Mediation

Arrangements for mediation in Law No.30 of 1999 can be found in the provisions of Article 6 paragraph (3) to (5). From the formulation of the article, it can be concluded that mediation is a process of activities in furtherance of the failure of the negotiations conducted by the parties. Arbitration Act does not

[20] *Ibid.*
[21] *Ibid,* p. 61-62

provide a clear definition of the formulation of what is meant by mediation or mediator.[22]

Mediation is a process of peace where the disputing parties submit the solution to a mediator to reach a fair outcome, without wasting too costly, but effective and fully accepted by the disputing parties voluntarily.[23] Mediation can also be regarded as a dispute resolution process with the mediation of a third party, namely the party which gave inputs to the parties to resolve the dispute. In contrast to arbitration, the decision of the arbitrator or the arbitral tribunal must be adhered to by the parties, like the court's decision. While for mediation, there is no obligation of each party to adhere to what is suggested by the mediator.[24]

d. Conciliation

Conciliation is not clearly defined in the Law No.30 of 1999, but conciliation is one of the institutions of alternative dispute resolution that can be found in the provisions of article 1 paragraph (9) and (10) general explanation of the law of arbitration. According to Oppenheim, conciliation is the dispute resolution process by handing it over to a commission of people whose job is to describe or explain the facts and typically after

[22] *Ibid*, p. 65
[23] Priyatna Abdulrrasyid, 2002, *Arbitrase dan Alternatif Penyelesaian Sengketa: Suatu Pengantar*, Jakarta, PT. Fikahati Aneska dan Badan Arbitrase Nasional Indonesia. p 33
[24] Jimmy Joses Sembiring, 2011, *Cara Menyelesaikan Sengketa di Luar Pengadilan*, Cet-1, Jakarta,Visimedia. p. 28.

hearing the parties and to ensure that they reach an agreement, make proposals for a settlement, but the decision is not binding.[25]

Thus, conciliation is an alternative dispute resolution process that involves a third party. Where the third party who opted to settle the dispute is someone who is professionally and provable barriers. Conciliator in the conciliation process has a very significant role, since a conciliator also obliged to express its opinions regarding seated problems or disputes encountered, alternative means of dispute resolution at hand, how the dispute resolution best, what are the advantages and disadvantages of the parties, as well as legal consequences. Although the conciliator has the right and authority to express their opinions openly and impartially to one of the parties to the dispute, the conciliator is not entitled to make a decision in a dispute for and on behalf of the parties. All the end result in the conciliation process will be determined solely by the parties to the dispute, and set forth in the form of an agreement between them.[26]

4. Definition of Arbitration

Definition of Arbitration pursuant to article 1 paragraph (1) of Law No.30 of 1999 is: a way of solving civil disputes outside the

[25] Huala Adolf, 1994, *Masalah-Masalah Hukum dalam Perdagangan Internasional*, Jakarta, PT RajaGrafindo Persada. p. 186 as quoted by *Ibid*, p. 75

[26] Gunawan Wijaya, 2001, Alternatif Penyelesaian Sengketa, Jakarta, RajaGrafindo Persada. p. 5 as quoted by *Ibid.*

public trial based on the arbitration agreement made in writing by the parties in the dispute.

While the definition of arbitration according to LAPSPI Regulation No.09/LAPSPI-PER/2015 is a way of settling civil disputes in banking and related fields of banking outside of general courts held by LAPSPI using LAPSPI Arbitration Rules and Procedures which are based on the arbitration agreement.

The word *Arbitrase* (Indonesia) comes from the word *arbitrare* (Latin), *arbitrage* (Netherlands), arbitration (England), *schiedspruch* (Germany), and *arbitrage* (French), which means the power to get things done according to discretion or peace by arbitrator or umpire.[27]

Abdulkadir Muhammad provides a definition of Arbitration as follows: "Arbitration is a private judicial body outside the general court, which is known specifically in the corporate world. Arbitration is a judicial chosen and determined voluntarily by entrepreneurs in dispute. Dispute resolution outside the General Court is the free will of the parties. This free will be set forth in a written agreement that they made before or after the event of any dispute in accordance with the principle of freedom of contract in civil law."[28]

M. N. Purwosutjipto use the term refereeing to arbitration, which is referred to arbitration is as follows: "refereeing is a justice of

[27] Rachmadi Usman, 2002, *Hukum Arbitrase Nasional,* Jakarta, Grasindo. p. 1
[28] *Ibid.* p.3

peace, where the parties agree that their dispute about their personal rights can be fully controlled, inspected and judged by an impartial judge, appointed by the parties themselves and the verdict is binding for both parties".[29]

Priyatna Abdurrasid argued that, "arbitration is a process of examination of a dispute that is done in a judicial manner as desired by the parties to the dispute, and the solution will be based on the evidence submitted by the parties".[30]

Dispute resolution in arbitration conducted by the agreement that the parties in dispute will submit to and obey the decision given by the judge or judges (arbitrators) they choose or appoint them directly. Therefore, arbitration is referred to as a justice of peace, which the parties in the dispute or clashed want their disputes concerning personal rights that they could be good fully investigated and tried by a judge (arbitrators) fair and impartial to one of the parties to the dispute , and to produce a binding decision for both parties.[31]

5. Definition of Arbitration Agreement

Definition of Arbitration Agreement based on Article 1 paragraph (3) of Law No. 30 of 1999 is an agreement in the form of an

[29] H.M.N. Purwosutjipto, 1992, *Pengertian Pokok Hukum Dagang, Perwasitan, Kepailitan dan Penundaan Pembayaran*, Jakarta, Djambatan. p.1.
[30] H. Priyatna Abdurrasyid, 2011, *Arbitrase dan Alternatif Penyelesaian Sengketa*, Jakarta, PT. Fikahati Aneska. p.56-57.
[31] M.Yahya Harahap, 2003, *Arbitrase : Ditinjau dari RV, Peraturan Prosedur BANI, ICSID, UNCITRAL, Convention on the Recognition and Enforcement of Foreign Arbitral Award*, Jakarta, Penerbit Sinar Grafika, p. 60

arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate agreement made by the parties after the dispute arises.

While the definition of the arbitration agreement under Article 1 paragraph (1) letter (k) of LAPSPI Regulation No.09/LAPSPI-PER/2015 is an agreement in the form of an arbitration clause contained in a written agreement made by the Parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises. This definition of arbitration agreement is the same as the definition of the arbitration agreement pursuant to Law No.30 of 1999.

However, it has to be kept in mind that the permissibility of binding itself in the arbitration agreement, must be based on mutual agreement (mutual consent). Volunteerism factors and collective consciousness are the cornerstone of the bond validity of the arbitration agreement. Accordingly, the validity and binding of any arbitration agreement must meet the provisions of article 1320 of the Civil Code. Regarding the choice of law, the parties are free to choose the law that will be applied to the settlement of disputes which may or has arisen between the parties.[32]

Article 7 of Law No.30 of 1999 provides that the parties may enter into an agreement or a dispute that will occur between them to

[32] Frans Hendra Winarta, *Op.Cit,* p. 37

be resolved by arbitration by a written agreement agreed by the parties. The existence of a written agreement agreed by the parties to submit the dispute or difference of opinion contained in the agreement in the state courts.[33]

Thus, it is clear that an oral arbitration agreement cannot be enforced because the arbitration agreement recognized in Law No.30 of 1999 is made in writing. In addition to be written, the other thing to consider is the requirements of the arbitration agreement must be described clearly and definitely.[34]

C. Overview of Alternative Dispute Resolution Institution in Indonesia

1. The Definition of Alternative Dispute Resolution Institution

   The definition of Alternative Dispute Resolution Institution according to Article 1 paragraph (2) of Financial Service Authority Regulation No. 1/POJK.07/2014 is an institution conducting an out-of-court dispute resolution.

2. The type of Alternative Dispute Resolution Institution

   a. Indonesian National Arbitrage Agency (*Badan Arbitrase Nasional Indonesia/BANI*)

      BANI Arbitration Center, or formally Indonesian National Arbitrage Agency (BANI), is an arbitral institution, providing a range of services in relation to arbitration, mediation, binding opinion and other form of dispute

[33] *Ibid.*
[34] *Ibid.* p. 38

resolutions. BANI was established in 1977 on initiative of three prominent lawyers, namely the late Prof. R. Subekti, the late Mr. Haryono Tjitrosoebono and Prof. H. Priyatna Abdurrasyid. With initial support of Indonesia Chamber of Commerce and Industry, the centre is located in Jakarta with offices in some Indonesia major cities including Surabaya, Bandung, Pontianak, Denpasar, Medan, Palembang and Batam.[35]

b. National Sharia Arbitration Board (*BASYARNAS)*

National Sharia Arbitration Board (*BASYARNAS*) was established on December 24, 2003, which was originally named the Indonesian *Muamalah* Board of Arbitration (BAMUI). It was established by the Indonesian *Ulema* Council (MUI) on October 21, 1993.[36] The idea of establishing an Islamic arbitration institution in Indonesia began with the meeting of experts, Muslim scholars, and Ulema to exchange ideas about the need for Islamic arbitration institutions in Indonesia. This meeting was initiated by the Board of Directors of the MUI on April 22, 1992. After several meetings and after several improvements to the organizational structure and procedures of the event finally on October 23, 1993 it was inaugurated by the

[35] Anonymoous, http://www.baniarbitration.org/about.php accessed on August 30th 2017., 11.15 pm

[36] Agus Faisal Yusuf, 2016, *Pelaksanaan Putusan Badan Arbitrase Syariah Nasional*, *http://pa-serang.go.id/index.php/menu-profil-hakim/82-kategori-artikel-hakim/104-pelaksanaan-putusan-badan-arbitrase-syariah-nasional-basyarnas* accessed on August 30th 2017, 11.20 am

Indonesian *Muamalah* Arbitration Board (BAMUI), and now renamed as the National Syariah Arbitration Board (BASYARNAS) which was decided in the 2002 MUI National Congress. Changes in the form and management of BAMUI are set forth in Decree No. MUI. Kep-09/MUI/XII/2003 dated December 24, 2003 as an arbitrator institution dealing with dispute resolution in the field of sharia economy.[37]

c. Alternative Dispute Resolution Institution in Financial Service Sector

Based on the Announcement No. PENG-1/D.07/2016 on the List of Alternative Dispute Resolution Institutions in the Financial Services Sector, OJK has updated the List of Alternative Dispute Resolution Institutions for the Financial Services Sector based on Decision No. KEP-01/D.07/2016 dated 21 January 2016. List of Alternative Dispute Resolution Institutions for the Financial Services Sector is as follows;

[37] Warkum Sumitro, 2004, *Asas-Asas Perbankan Islam & Lembaga-lembaga Terkait (BAMUI, Takaful dan Pasar Modal Syariah di Indonesia)*, Jakarta, Raja Grafindo Persada, p. 167. as quoted by *Ibid.*, accessed on August 30th 2017, 11.20 am

Table 1.

List of Alternative Dispute Resolution Institutions for Financial Services Sector

No.	Name ADR Institution	Address	Sector
1.	Indonesian Insurance Mediation and Arbitration Agency (BMAI)	Gedung Menara Duta Lt.07, Wing A Jl. HR. Rasuna Said Kav. B-9 Jakarta 12910	Insurance
2.	Indonesian Capital Market Arbitration Board (BAPMI)	Gedung Bursa Efek Indonesia, Tower 1 floor 28 Room 2805 Jl. Jend. Soedirman Kav. 52-53 Jakarta 12190	Capital Market
3.	Pension Fund Mediation Board (BMDP)	Gedung Artaloka Lantai 16, Jl. Jend. Soedirman Kav. 2 Jakarta	Pension Fund

4.	Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI)	Griya Perbanas Lt. 1 Jl. Perbanas, Karet Kuningan, Setiabudi, Jakarta	Banking
5.	Indonesian Arbitration and Mediation Agency for Underwriting Companies (BAMPPI)	Gedung Jamkrindo Jl. Angkasa Blok B-9 Kv. 6 Kota Baru Bandar Kemayoran Jakarta Pusat	Guarantee
6.	Indonesian Financing and Pawnshop Mediation Agency (BMPPI)	Kota Kasablanka Tower A Lantai 7 unit D Jl. Kasablanka Kav. 88, Jakarta	Financing and Pawnshops

Source: The OJK Announcement No. PENG-1/D.07/2016 on the List of Alternative Dispute Resolution Institutions in the Financial Services Sector

The Alternative Dispute Resolution Institution is a place for dispute resolution between the consumer and the Financial Services Institution in the sectors of insurance, capital markets, pension funds, banking, guarantee, financing and pawnshops that meet the principles of accessibility, independence, fairness, efficiency, and effectiveness and overseen by OJK.[38] Based on the list it can be seen that the Alternative Dispute Resolution Institution in Banking sector is LAPSPI.

D. Overview of The Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI)

1. The Background of the Establishment of LAPSPI

The establishment of *Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia* (LAPSPI) is inseparable from the fact that in the customer complaint resolution by the Banking Institutions is often do not reach an agreement between the Consumer Banking Institution. To overcome this an Alternative Dispute Resolution Institute outside the court that is handled by people who understand the world of banking and is able to resolve the dispute quickly, inexpensive, fair and efficient is required.[39]

[38] Anonymous, http://www.ojk.go.id/id/berita-dan-kegiatan/pengumuman/Pages/Daftar-lembaga-Alternatif-Penyelesaian-Sengketa-di-Sektor-Jasa-Keuangan.aspx accessed on June 15th, 2017. 8.42 am

[39] Anonymous, *Profile* in https://lapspi.org/profile/ accessed on December 19th, 2016., 5.44 am

On the basis of the Rules of the Financial Services Authority No. 1/POJK.07/2014 of the Alternative Dispute Resolution Agency in the Financial Sector, in Banking Association, 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), has signed a Memorandum of Understanding dated May 5, 2015 to form the Institute for Alternative Dispute Resolution, which was later named the Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI).[40]

Statutes of LAPSPI were set forth in Notarial Deed of Establishment No. 36 dated 28 April 2015 made in the presence of Mrs. Ashoya Ratam, SH, M.Kn, Notary in Jakarta, and has been approved by the Ministry of Justice and Human Rights of the Republic of Indonesia with Decree No.AHU-0004902.AH.01.07 year 2015, dated September 16, 2015.[41]

[40] *Ibid.*
[41] *Ibid.*

2. The Purpose of the Establishment of LAPSPI

   The establishment of LAPSPI of has the two purposes as follows:

   a. to meet the public demand for the availability of mechanisms for dispute resolution outside the court in the financial services sector both conventional and Islamic banking is fast, inexpensive, fair and efficient.
   b. to realize the coordination and cooperation among the association in the banking sector in resolving disputes with regard to the characteristics of the problem by promoting independence and compliance with laws and regulations.

3. Type of Service

   LAPSPI provide dispute resolution services in the dispute resolution mechanisms outside the court (out-of-court dispute settlement), which includes Mediation, Adjudication and Arbitration. Settlement of disputes that can be resolved by LAPSPI must meet the following requirements[42]:

   a. It is a civil dispute arising between the parties in the field or related to banking
   b. There is an agreement between the parties to the dispute that the dispute will be resolved through LAPSPI
   c. There is a written application (of registration) of the parties to the dispute to LAPSPI

[42] *Ibid.*

d. It is not a matter of dispute within the scope of criminal law or administrative law.

As an alternative dispute resolution institutions, LAPSPI ensure and uphold the integrity, independence and impartiality of the mediator/adjudicator/arbitrator, as stipulated in the Code Mediator/Arbitrator of LAPSPI. A mediator/adjudicator/arbitrator of LAPSPI does not allowed to handle disputes if such a conflict of interest with the cases handled or with one of the parties to the dispute or their legal representatives. If it is known there is apparently a conflict of interest between the mediator/adjudicator/arbitrator with the parties, the mediator/adjudicator/arbitrator in question should be replaced with others that do not have a conflict of interest.[43]

[43] *Ibid*