

CHAPTER IV

RESULTS AND ANALYSIS

A. Banking Dispute Settlement Mechanism through Arbitration in Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI)

The mechanism of banking dispute resolution through Arbitration in LAPSPI is regulated in LAPSPI Regulation No. 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures. If there are certain matters which are not regulated in the LAPSPI Regulation then it can be seen in other laws and regulations. The parties resolving the dispute through arbitration in LAPSPI shall comply with LAPSPI regulations and other laws and regulations.

The parties wishing to resolve the dispute through arbitration in LAPSPI must know the criteria for solving the arbitration dispute in LAPSPI. Disputes that may be resolved through LAPSPI Arbitration shall meet all of the following criteria:

1. It is a dispute in banking and / or related to banking field;
2. The disputes concern rights which, by law and by laws and regulations, are fully controlled by the disputing Party;
3. The disputes, according to the legislation, can be held peace.
4. The petitioner and the respondent are bound by the Arbitration Agreement

Disputes that may be resolved through arbitration in LAPSPI shall be disputes that have not been registered, processed and terminated by other arbitration bodies or by courts. This is so that there is legal certainty of the decision obtained from arbitration in LAPSPI.

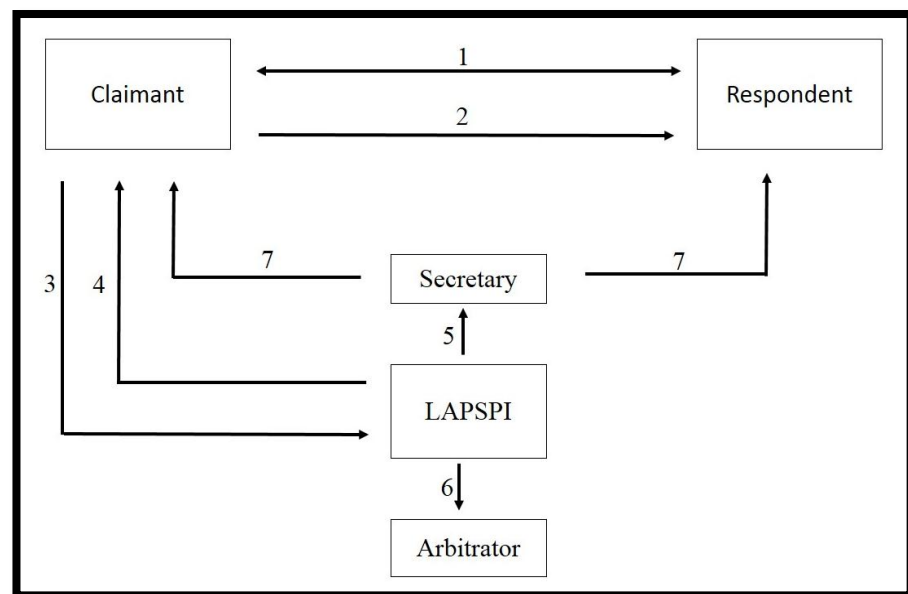
The mechanism of dispute resolution of banking through Arbitration in LAPSPI according to LAPSPI Regulation No. 09/LAPSPI-PER/2015 namely:

1. Pre-Arbitration Examination

Figure 1.

Pre-Arbitration Examination based on LAPSPI Regulation

No. 09/LAPSPI-PER/2015



Source: Research Result of Meriza Dewi Chusnul Chasanah

Pre-arbitration examination based on LAPSPI Regulation

No.09/LAPSPI-PER/2015 they are:

a. Arbitration Agreement

The parties to the dispute may agree in writing of a dispute arising or which will occur between them to be settled by Arbitration at LAPSPI in an Arbitration Agreement document.⁴⁵

The LAPSPI Arbitration Agreement may take the form of⁴⁶:

- 1) An agreement in the form of an arbitration clause contained in a written agreement signed by the parties before a dispute arises;
or
- 2) A separate Arbitration Agreement made by the Parties after the dispute arises.

The Arbitration Agreement shall expressly state the appointment of the LAPSPI Arbitration Forum. However, for the sake of legal certainty in the case of the Parties to the Arbitration Agreement does not mention the Arbitration Forum but agree to use LAPSPI Regulation and Procedures then the Parties shall be deemed to have designated the LAPSPI Arbitration Forum in the Arbitration Agreement.⁴⁷

For example the arbitration clause contained in article 11 of the Credit Agreement Number: 114/VI.PKMK/A13-

⁴⁵ Article 3 paragraph (1) of LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁴⁶ Article 3 paragraph (3) of LAPSPI Regulation No. 09 / LAPSPI-PER / 2015 on Arbitration Rules and Procedures

⁴⁷ Article 3 paragraph (4) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

0233/11/11/2016 which reads, "In the event of a dispute it must be resolved by deliberation and mediation. If that does not work then the problem is solved through Arbitration at the Indonesian Alternative Agency for Banking Dispute Resolution

The parties which have been bound by the LAPSPI Arbitration Agreement have legally agreed to abolish the process of examining the case through the District Court and/or other Arbitration Agencies, and shall execute any decision taken by the Single Arbitrator/Arbitration Panel.⁴⁸ If the parties have been through the process of examining the case through the District Court and/or other Arbitration Agencies, LAPSPI shall be entitled to refuse the case.

In the event that the Parties choose the settlement of the dispute through the Arbitration in LAPSPI after the dispute has occurred, then accordingly it shall be made in a written Arbitration Agreement signed by the Parties.⁴⁹ If the parties cannot accept the arbitration agreement then the written agreement must be made in the form of notarial deed.⁵⁰ LAPSPI, at the request of one party may also facilitate a meeting between the Parties in the preparation of the Arbitration Agreement.

⁴⁸ Article 3 paragraph (5) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁴⁹ Article 4 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵⁰ Article 4 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

b. Notifications

In the event of a dispute arising, and before the Claimant submit the application of the Arbitration to LAPSPI, the Claimant shall notify the Respondent by ransom of the Board by registered mail, telegram, telex, facsimile, e-mail or by mail sent by courier that the Arbitration requirement held by the Parties already in effect.⁵¹ After the Respondent receives the notice, the Respondent shall respond to the Claimant, by the Board's redemption, within 10 (ten) days after receiving the notice, in particular the response to the number of arbitrators proposed by the Claimant.⁵²

c. Registration of Petition for Arbitration

Arbitration shall be held on the basis of the Petition for Arbitration submitted by the Claimant to LAPSPI in sufficient quantity of copies for the purposes of the arbitral proceedings.⁵³ The Petition for Arbitration shall be in the form of⁵⁴:

- 1) Petition letter containing:
 - a) Full name, and place of residence or domicile of the parties;
 - b) Brief description of the dispute;
 - c) The content of clear demands; and

⁵¹ Article 5 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵² Article 5 paragraph (3) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵³ Article 6 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵⁴ Article 6 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

2) Attachments:

- a) Photocopy of payment receipt or registration fee;
- b) Photocopy of the Arbitration Agreement underlying the Petition for Arbitration;
- c) The certificate of submission of the proof presented and the statement;
- d) Photocopy of evidence document, or if it is not included then in the arbitration appraisal shall be explained that a photocopy of evidence document will be filed in the hearing.

In the Petition for Arbitration, the Claimant may appoint an arbitrator, or submit the appointment of the arbitrator to LAPSPI.

d. Confirmation on the Registration of the Petition for Arbitration

The Board of Directors submits confirmation on the Registration of the Petition for Arbitration is received or rejected by letter to the Claimant with the Respondent's rescission within 10 (ten) days after the date of registration.⁵⁵ If the registration of the Petition for Arbitration is rejected then the rejection letter shall contain the reason for the rejection of the Petition for Arbitration.⁵⁶

Whereas if the Petition for Arbitration is declared accepted then the

⁵⁵ Article 6 paragraph (3) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵⁶ Article 6 paragraph (4) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

Claimant or the Respondent receives a letter of acceptance containing⁵⁷:

- 1) Notice of the commencement of the appointment of the Arbitrator;
 - 2) Notification of the name of the secretary appointed by the management for the case concerned;
 - 3) Information on Arbitration fees for the case;
 - 4) Copies of the Petition for Arbitration to the Respondent.
- e. Appointment of Secretary

Upon receipt of the Petition for Arbitration, LAPSPI has appointed the secretary for the case concerned. The Board delegates the authority to confirm the registration of the Petition for Arbitration to the Secretariat personnel.⁵⁸ The Board may designate 1 (one) or more secretarial personnel. The appointed Secretary has duties such as⁵⁹:

- 1) creating an official or trial report;
- 2) making minutes of consultative meetings of the Arbitration Assembly;
- 3) taking care of Arbitration correspondence;

⁵⁷ Article 6 paragraph (5) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵⁸ Article 7 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁵⁹ Article 7 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

- 4) storing Arbitrage notes and documents;
 - 5) signing a summons to the Parties or the name of the Single Arbitrator/Arbitration Penal;
 - 6) assisting the Single Arbitrator/Arbitration Penal in preparing the inspection schedule and reminding of the Arbitration period;
 - 7) assisting the Single Arbitrator/Arbitration Penal in making a report to the Management regarding the completion of the Arbitration;
 - 8) becoming the recipient of the power of the Single Arbitrator/Arbitration Penal to register the Arbitration Ruling.
- f. Appointment of Arbitrators

The Parties in Arbitration may agree on the number of Arbitrators who shall examine the dispute between the Parties in an odd number.⁶⁰ If the Arbitration Agreement does not contain the arbitrator, the arbitrator shall be considered 3 (three) persons, unless the Parties may agree to another amount before the Board shall deliver a confirmation letter for the receipt of the Petition for Arbitration.⁶¹ Please note that the LAPSPI Board has published a List of Fixed Arbiter Names open to the public and update them

⁶⁰ Article 9 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁶¹ Article 9 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

whenever there are changes to the list. Here is the list of LAPSPI Arbitrator Name⁶²:

- 1) Prof.Dr. Sutan Remy Sjahdeini, S.H., FCBArb
Law Offices of Prof.Dr.Sutan Remy Sjahdeini, SH. & Partners.
- 2) Dr. Susanti Adi Nugroho, S.H., M.H

The Appointment of Arbitrator consist of 2 (two) ways, namely:

- 1) Single Arbitrator Appointment

In case of any dispute arising will be examined or disconnected by a Single Arbitrator, the Parties shall be obliged to reach an agreement on the designation of the Single Arbitrator. Within a maximum period of 14 (fourteen) days after the Claimant and the Respondent have received confirmation of the Registration of Petition for Arbitration, the Parties shall already notify the Board of the Agreement regarding the agreement in appointing the Single Arbiter by enclosing a confirmation letter of acceptance of appointment from the concerned Arbitrator.⁶³

If in the eventual period of time, the Parties fail to appoint a Single Arbitrator, the Board shall be entitled to appoint a Single Arbiter within a period of no later than 14

⁶²Anonymous, <https://lapspi.org/mediator-ajudikator-arbiter/daftar-mediator-ajudikator-arbiter> accessed on September 1st 2017., 11.00 am

⁶³ Article 10 paragraph (3) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

(fourteen) days after the expiration of the term limit.⁶⁴ The Board may extend such period within a maximum of 10 (ten) days.⁶⁵ The appointment of the sole arbitrator by the Board shall be final and binding on the Parties unless there is a submission of a right of disbelief.⁶⁶

2) Appointment of the Arbitration Penal

In case of any dispute arising will be examined or terminated by the Arbitration Penal, each Party shall be given an opportunity to appoint an Arbitrator.⁶⁷

a) Appointment of Arbitrators by the Parties⁶⁸:

Within a maximum period of 14 (fourteen) days after each party receives confirmation of registration of the Petition for Arbitration, each party shall have to give notice to the Management regarding the appointment of the Arbitrator by enclosing a confirmation letter of acceptance of appointment from the concerned Arbitrator.

Upon the expiry of the term, one of the parties fails to appoint the Arbitrator, the Board shall designate the

⁶⁴ Article 10 paragraph (4) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁶⁵ Article 10 paragraph (5) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁶⁶ Article 10 paragraph (6) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁶⁷ Article 11 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁶⁸ Article 11 paragraph (4) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

Arbitrator for that Party within a period of no more than 14 (fourteen) days after the expiration of the time limit. The Board may extend such period within a maximum of 10 (ten) days.

b) Appointment of Arbitrators by both Arbitrators⁶⁹:

Both appointed Arbitrators are authorized to designate the third Arbitrator. Within a maximum period of 14 (fourteen) days after the last arbitrator is appointed, the two arbitrators shall notify the Board of the Arbitrator of the appointment of the Arbitrator by enclosing a confirmation letter of acceptance of appointment from the concerned Arbitrator.

If within the period above the two Arbitrator fails to designate the third Arbitrator, then the Management shall designate the third Arbitrator within a period of 14 (fourteen) days after the expiry of the time limit. The Board may extend the period of no later than 10 (ten) days. The Third Arbitrator shall be appointed Chairman of the Arbitration Panel, unless otherwise agreed by the Arbitrators in the Arbitrator Assembly. In an Arbitration Panel, at least 1 (one) Arbitrator shall be based on legal experience.

⁶⁹ Article 11 paragraph (5) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

Within a maximum period of 10 (ten) days after the Single Arbitrator/Arbitration Penal shall confirm the acceptance of his appointment, the Board shall issue a Decision of the Board regarding the appointment of the Arbitrator for the case concerned.⁷⁰ Upon the appointment of the Arbitrator, the Board shall submit the file of the Arbitration Appeal to the Single Arbitrator/Arbitration Penal through the Secretary in order to have the first session determined immediately.

g. The Summons for Arbitration Examination

The Summons for Arbitration Examination is given within 14 (fourteen) days after the Single Arbitrator/Arbitration Penal receives the Files of Arbitration from the Board. Single Arbitrator/Arbitration Penal delivers summons to the Parties through the Secretary of the case. The hearing summons contains an order to the Respondent to provide the answer ("answer") in writing at the first hearing.⁷¹ The First Session shall be no later than 14 (fourteen) days after receiving the summons.⁷²

⁷⁰ Article 13 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁷¹ Article 26 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁷² Article 21 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

2. Arbitration Examination

The duration of the Arbitration Arrangement shall be 180 (one hundred and eighty) days from the date of appointment of the Single Arbitrator/Arbitral Panel as the arbitrator of the case.⁷³

The parties to the dispute have equal rights and opportunities in expressing their opinions. In general, the language used in all Indonesian dispute settlement processes is Indonesian, unless the parties are foreign persons or institutions, or when the parties elect a Foreign Arbitrator, then upon arbitrator or arbitral approval, the parties may choose another language to be used on the grounds of the presence of foreign parties or foreign arbitrators who cannot speak Indonesian.⁷⁴ The provision is also provided for in article 19 (1) of LAPSPI Regulation No. 09/LAPSPI-PER/2015, stating that the language used in all LAPSPI arbitration processes is Indonesian, except with the approval of the Single Arbitrator/Arbitral Panel, the Parties may choose another language, however So the Arbitral Award must still be made in Bahasa Indonesia.

Referred to as the place of arbitration where the place of arbitration proceeds to the examination process. Regarding where arbitration checks the dispute, is one of the rules specified in various

⁷³ Article 18 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁷⁴ Susanti Adi Nugroho, *Op.Cit.*, p.161

regulations. The rules are also found in both national and international arbitration.⁷⁵ As stipulated in Article 20 paragraph (1) of LAPSPI Regulation No. 09/LAPSPI-PER/2015, the LAPSPI Arbitration Trial shall be held in Jakarta or elsewhere determined by the Board together with the Single Arbitrator/Arbitration Panel. However, the parties may propose elsewhere with the approval of the Sole Board and Arbitrator.

The parties shall be entitled to determine the choice of law that will apply to any dispute settlement that may or may arise between the parties. If the Parties do not specify otherwise, then the applicable law shall be the law in which the Arbitration shall take place.⁷⁶

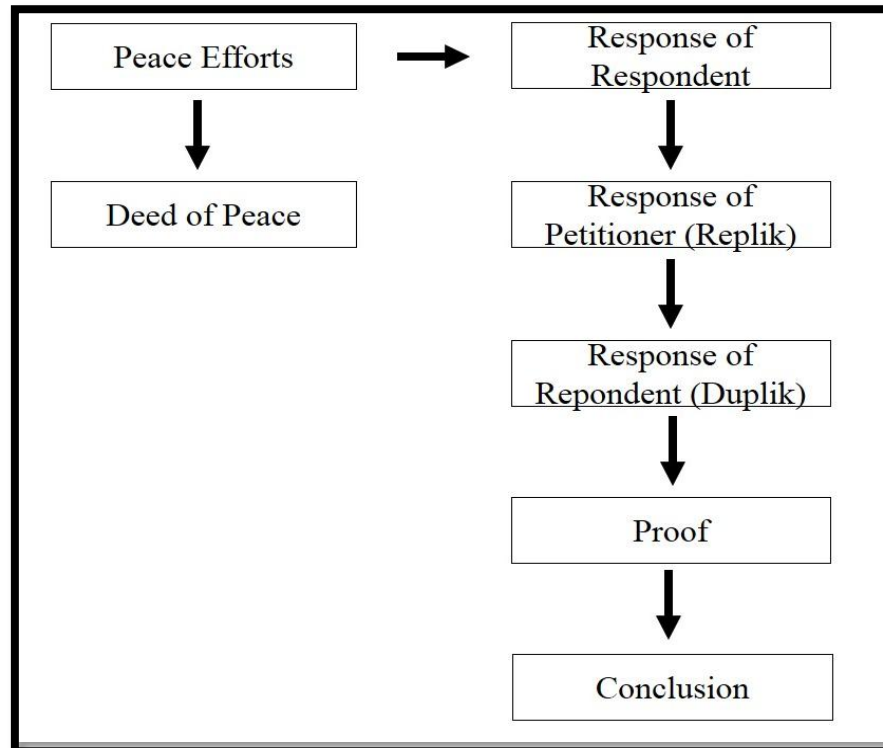
⁷⁵ *Ibid.*, p.162

⁷⁶ Article 21 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

Figure 2.

Arbiration Examination based on LAPSPI Regulation

No. 09/LAPSPI-PER/2015



Source: Research Result of Meriza Dewi Chusnul Chasanah

The examination stages are:

a. Peace Efforts and Response of the Respondent

At the first trial, the Arbiter seeks peace between the Parties first. If the Parties agree to pursue a peace effort then the Arbitrator may suspend the proceedings of the Arbitration. Such peace-building can be done through direct negotiation or mediation.

The Parties shall return to the Arbitrator on the appointed day of the hearing to report the results of the peace efforts. If in the event of a peace agreement reaching a peace agreement the Arbitrator establishes a final Deed of Peace and binds the Parties and punishes the Parties to comply with the terms of the peace. Whereas, if the Parties are unsuccessful in the peace effort then the arbitration examination is continued. However, at each stage of the Arbitrator hearing continues to seek peace between the Parties, the Parties shall be entitled to propose peace until before the Arbitral Ruling is read out.

Arbitration examination shall be continued with the response submitted by the Respondent to the Arbitrator in sufficient quantity of copies for inspection purposes. The Respondent's Response Submission also includes written evidence attached to the Answers. If the Respondent presents an answer regarding the absolute exception of LAPSPI's competence, then the exception cannot be delivered separately from the Answers regarding the principal issue of the case.

b. Replic and Duplic

To the Respondent's Response, the Claimant is entitled to respond ("Replic") and to the Replic, the Respondent is also entitled to respond ("Duplic"), within the time specified by the Arbitrator and in sufficient number of copies for inspection purposes. The

Claimant or the Respondent may remedy, modify and add the Reply, Replic and Duplic documents within a maximum of 3 (three) days after the documents are submitted.⁷⁷

c. Proof

The next stage is Proof. Any Party claiming to have a right, or arguing an event to affirm its right, or to deny a proposition and/or the rights of another Party shall prove the existence of that right or the events it proposes.⁷⁸ By means of evidence including written (including electronic) evidence, evidence of witnesses, allegations, confessions, and oaths.⁷⁹

The witness's evidence at the request of the parties or on the orders of the Arbitrator may be requested by a person to give testimony of witness (fact witness and/or expert) in the Arbitration examination.⁸⁰ The testimony of the witness is determined by the arbitrator whether the testimony of the fact witness can be given in writing or verbally.⁸¹

d. Conclusion and Closure of Examination Meeting

The Parties shall be given the opportunity to explain in writing the establishment of each Party the last time

⁷⁷ Article 29 LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁷⁸ Article 31 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁷⁹ Article 31 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁰ Article 32 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸¹ Article 32 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

("Conclusions") at the time set by the Arbitrator.⁸² The conclusions of each Party are solely for the arbitrator, and the Secretary does not give them to the opposing Party. After the submission of their respective conclusions, the Arbitrator sets the session closed and prescribes the day of the hearing for the reading of the Arbitral Award.⁸³

3. Post Arbitration Examination

a. Recitation of Arbitral award

Arbitrators make decisions based on legal provisions, or on the basis of justice and propriety (*ex aequo et bono*).⁸⁴ If the Parties authorize the arbitrator to provide judgments on the basis of justice and fairness, then the laws and regulations may be set aside. However, in certain cases, law force (*dwingede regels*) must be applied and cannot be excluded by the arbitrator.

In the case of any one party's request, the Arbitrator shall be authorized to impose an interlocutory decision, including provisional judgments deemed necessary in respect of dispute settlement, inter alia to impose a judgment on the seizure of collateral, order the storage of goods on a third party, or the sale

⁸² Article 33 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸³ Article 33 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁴ Article 34 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

of goods which will not hold long.⁸⁵ The interlocutory verdict is read in advance of the hearing during the period of examination, within the time set by the Arbitrator.⁸⁶

The final award of arbitration shall be read by the arbitrator at the hearing of the decision reading within 30 (thirty) days after the examination session is closed.⁸⁷ In the event of a correction to the Arbitration Regulation, within a maximum period of 14 (fourteen) days, either party or parties may apply to the Arbitrator to correct the administrative error and/or increase or decrease a decision.⁸⁸

b. Registration of Arbitral Award

Arbitral award is registered by the Secretary of the case for the power of the Arbitrator to the Clerk of the District Court.⁸⁹ As for the LAPSPI Arbitration Regulation which is treated as an International Arbitration Regulation, must be submitted and registered by the Secretary to the Central Jakarta District Court Clinic to be requested for recognition and execution.

⁸⁵ Article 36 LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁶ Article 37 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁷ Article 37 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁸ Article 38 LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁸⁹ Article 39 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

c. Implementation of Arbitral award

The Arbitral Award shall be final and has a permanent legal force and binding on the Parties, and thus shall not be appealed, cassation or reviewed.⁹⁰ In the event that the Parties do not carry out the Arbitration Ruling voluntarily, the ruling shall be executed by the order of the Head of the District Court at the request of one of the Parties to the dispute.⁹¹

In the event that any Party fails to comply with or performs an Arbitration Ruling within the prescribed time, the other party may enter a written warning to the dissenting Party with a copy of LAPSPI.⁹² LAPSPI, within 7 (seven) days counted upon receipt of a copy of the letter may deliver a written warning to the Dismissed Party, with a copy of the other Party.⁹³

d. Arbitration Fees

Arbitration fees include⁹⁴:

- 1) Registration fee;
- 2) Inspection fees;

⁹⁰ Article 40 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁹¹ Article 40 paragraph (2) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁹² Article 40 paragraph (3) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁹³ Article 40 paragraph (4) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

⁹⁴ Article 42 paragraph (1) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

- 3) Arbitration Fees;
- 4) The Cost of Implementation of the Arbitration Award.

The registration fee for the LAPSPI Arbitration Application is as follows⁹⁵:

- 1) Basic saving account BSA/UMKM customers are not subject to registration fee;
- 2) Non BSA/UMKM customers are charged a registration fee of Rp.2.000.000, - (two million rupiah), borne by the Applicant and must be paid at the time of registration of the Arbitration Application.

The examination fee and the cost of execution of the arbitration award shall be applied to BSA/UMKM customers and non BSA/non-UMKM customers. The examination fee of Article 44 (1) and the cost of execution of the arbitration decision article 46 (1) a, b, c is the cost component to determine the minimum deposit which must be paid by the Parties on a pro-rata basis before the commencement of the arbitration process. The minimum deposit required by the parties is Rp.15.000.000, - (fifteen million rupiah).

⁹⁵ Attachment 1 of LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

Table 2

**LAPSPI Arbitration Costs by LAPSPI Regulation Number
09/LAPSPI-PER/2015**

No.	Dispute Value		Percentage of Cost
	0 up to 500 million	:	6,50 % dispute value, minimum Rp.20 million
a.	>Rp.500 million up to Rp.1 billion	:	3,60 % dispute value minimum Rp. 18 million
b.	> Rp. 1 billion up to Rp. 2,5 billion	:	2,82 % dispute value minimum Rp. 28,2 million
c.	>Rp. 2,5 billion up to Rp. 5 billion	:	1,80 % dispute value minimum Rp. 45 million
d.	>Rp. 5 billion up to Rp. 10 billion	:	1,32 % dispute value minimum Rp. 90 million
e.	> Rp. 10 billion up to Rp. 20 billion	:	0,84 % dispute value minimum Rp. 84 million
f.	> Rp. 20 billion up to	:	0,54 % dispute value

	Rp. 35 billion		minimum Rp. 108 million
g.	> Rp. 35 billion up to Rp. 50 billion	:	0,45 % dispute value minimum Rp. 157.5 million
h.	> Rp. 50 billion up to Rp. 75 billion	:	0,38 % dispute value minimum Rp. 190 million
i.	> Rp. 75 billion up to Rp. 100 billion	:	0,30 % dispute value minimum Rp. 225 million
j.	> Rp. 100 billion up to Rp. 250 billion	:	0,21 % dispute value minimum Rp. 210 million
k.	> Rp. 250 billion up to Rp. 500 billion	:	0,18 % dispute value minimum Rp. 450 million
l.	More than Rp. 500 billion	:	0,06 % dispute value minimum Rp. 300 million

Sources: Attachment 1. LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

The cost of the arbitration contains the following elements:

- a. Fee for Arbitrators of 60%; and

With a minimum Fee for Arbitrators of Rp. 20.000.000, -
(twenty million rupiah).

- b. Fee for LAPSPI by 40%.

Arbitrage fees are payable entirely by the Parties on a pro rata basis before the first hearing is held. If the Respondent is not willing to pay the Arbitration Fee, then the Applicant must pay it first so that the Arbitration process can proceed. Whereas, if the Applicant has made a payment of the Arbitration Fee, and the Arbitration Ruling grants the Applicant's claim in whole or in part, then in the Decision of Arbitration shall also contain the terms of reimbursement of such fees by the Respondent to the Applicant with the following fine and interest if any.

B. The Legal Effect of Arbitral Award in Indonesian Alternative Agency for Banking Dispute Resolution (LAPSPI) toward the Parties

Parties that resolve arbitration disputes in LAPSPI are deemed to have agreed to implement all the rules applied by LAPSPI. The parties shall be deemed to have the right to carry out the LAPSPI arbitral award. The arbitral award shall be binding on both parties to the treaty if it is exercised in accordance with applicable law.

According to article 34 paragraph (1) LAPSPI Regulation No. 09/LAPSPI-PER/2015, which states that: "Single Arbitrator/Arbitration Penal shall decide on the basis of the law, or by justice and propriety (*ex aequo et bono*)."

It also regulated in article 21 paragraph (1) of LAPSPI Regulation No. 09/LAPSPI-PER/2015, which states that: "The Parties shall be entitled to determine the choice of law that will apply to any dispute settlement that may or has arisen between the Parties. If the Parties do not specify otherwise, then the law applied shall be the law on which the arbitration shall take place. "

Thus the Arbitral award shall be taken under the law or by justice and propriety (*ex aequo et bono*). In the event that the arbitrator is given the freedom to make judgments on the basis of justice and propriety, then legislation may be set aside. However, in certain cases, *dwingende regels* must be applied and cannot be disrupted by the arbitrator. On the other hand, in the event that the arbitrator is not authorized to make judgments on the basis of justice and propriety, the arbitrator can only give judgment on the basis of the rules of material law as exercised by the judge.⁹⁶

The provisions of Article 21 paragraph (1) of LAPSPI Regulation Number 09/LAPSPI-PER/2015 also allows the parties to decide for themselves the legal options that will apply to their settlement disputes. LAPSPI Regulation Number 09/LAPSPI-PER/2015 provides flexibility to

⁹⁶ *Ibid.*, p. 181

the parties to the dispute to determine which laws will be applied in the arbitration process. Meanwhile, if the parties do not specify otherwise, the law applied shall be the law on which the arbitration shall take place.⁹⁷

In practice, the arbitral panel provides the basis of its arbitration decisions and specifies the date and place of the award. The arbitral award shall include the following matters⁹⁸:

1. Head of Decision which reads "FOR THE SAKE OF JUSTICE UNDER THE ONE ALMIGHTY GOD";
2. Full name and address of the Parties;
3. Full name and address of the Arbitrator;
4. Brief description of the dispute;
5. The establishment of the Parties;
6. Information that the Single Arbitrator/Arbitration Panel has sought peace between the Parties;
7. Considerations and conclusions of Single Arbitrator/Arbitration Panel on the whole dispute;
8. The opinion of each arbitrator in the event of any dissenting opinion in the Arbitration Tribunal;
9. Ample verdict, including any term of the Arbitration Ruling shall be executed and the obligation of Arbitration fees;
10. Place and date of verdict;

⁹⁷ *Ibid.*

⁹⁸ Article 35 paragraph (6) LAPSPI Regulation Number 09/LAPSPI-PER/2015 on Arbitration Rules and Procedures

11. Signature of Single Arbitrator/Arbitration Penal;
12. A description of the reasons, if they occur.

The arbitral award as well as the court decision contains three things⁹⁹:

1. *Condemnatoir* verdict

The *condemnatoir* verdict is a dictum of judgment against a party. For example, the applicant is punished to pay a certain amount to the applicant. This kind of judgment can be done by the District Court in real terms. Therefore, the rejection of execution by the Chief Justice is not only based on Article 4 and Article 5 of the Law No.30 of 1999, but a verdict of arbitration which dictum its decision entirely declaratory or constitutive may also be the reason the arbitral award cannot be implementation.

2. *Deklaratoir* Verdict

The *Deklaratoir* Verdict is a judgmental verdict or just affirmation of a legal state. Such judgment, although found in the arbitral award, shall not be applicable by the District Court.

3. Constitutive Decisions

Constitutive Decisions are judgments that exclude a state of law or that lead to a new legal state, such as a dictum of judgment which says a person is declared bankrupt or who declares a person to have committed a breach of contract. This dictum of judgment,

⁹⁹ Susanti sdi Nugroho, *Op.Cit.*, p. 213-214

although valid and permissible, includes a dictum of decisions which cannot be executed by the District Court in real terms.

The execution of the decision is the realization of the obligations of the parties concerned to fulfill the achievements listed in the decision. Both judges and arbitration rulings, basically have a meaning that is not much different, and the two decisions are known as the final decision. The court's verdict is open, since the whole proceeding of the proceedings is open to the public, so the judge's verdict should be pronounced in court open to the public. If the verdict of the judge is not pronounced in an open hearing, the verdict is invalid. Whereas the verdict made in the arbitration case is done in closed session; therefore, the arbitral award shall not be published. The arbitral award may be regarded as a decision which has had legal status and power equal to the judge's decision.

An arbitral award has been honored by both parties. One party shall not be against the verdict. Therefore, to obey a verdict can be imposed through the execution agency.

The implementation of the arbitral award in LAPSPI is regulated in Article 40 of LAPSPI Regulation no. 09/LAPSPI-PER/2015 namely:

1. The Arbitral Award shall be final and has a permanent legal force and binding on the parties, and thus shall not be appealed, cassation or reviewed.

2. In the event that the parties do not implement the Arbitral Award voluntarily, the award shall be executed by order of the Head of the District Court at the request of one of the parties to the dispute.
3. In the event that any party does not comply with or perform the arbitral award within the stipulated time, the other party may enter a written warning to the dissident party with a copy of LAPSPI.
4. LAPSPI, within 7 (seven) days after receiving the copy of the letter, may submit a written warning to the dissident party, with copies of other parties.
5. If within 7 (seven) days after receiving the letter of reprimand from LAPSPI, still disbursed, LAPSPI and / or other party may re-submit written warning to dissident party with a copy of LAPSPI member where each party becomes its member .
6. The parties have acknowledged and agreed and will not file any claim to LAPSPI and any other Party that, if it is past 7 (seven) days after the date of submission of the letter as referred to paragraph (5) is also denied, LAPSPI and / or any other Party may submit a written reprimand to the dissident party, a copy of the Financial Services Authority and all LAPSPI Members.

From the article, it can be concluded that, the Arbitral Award shall be final and has a permanent legal force and binding on the parties after the Arbitral Award is registered with the Clerk of the District Court. So the arbitral award is like a court decision. If the parties do not execute the

arbitral award voluntarily, then on the initiative of one of the parties appealed to the Head of the District Court to give the order for the execution of the arbitral award. If either party does not carry out the arbitral award after receiving an order from the Head of the District Court, then the other party may issue a written warning to the party who does not carry out the arbitral award with a copy of LAPSPI. 7 (seven) days after receiving the written warning does not perform the arbitral award then LAPSPI may submit a written warning with copies of other parties. If after 7 (seven) days party does not carry out the arbitral award, LAPSPI and/or other Party may submit a written warning with a copy of LAPSPI Member where each Party is a member. However, within 7 (seven) days after receiving such written warning, the party does not perform the arbitral award, LAPSPI and/or other Parties may submit a written warning with a copy of the Financial Services Authority and all LAPSPI Members.

Examples of cases in the execution of arbitral award in article 40 LAPSPI Regulation No.09/LAPSPI-PER/2015 are as follows: If the dissident party is Respondent, the Claimant can make a written warning to the Respondent with a copy of LAPSPI. If within 7 (seven) days of receipt of such written warning the Respondent still does not carry out the arbitral award, LAPSPI may submit a written warning to the Respondent with a copy of the Claimant. If Respondent still does not carry out the arbitral award within 7 (seven) days after receiving a written warning from LAPSPI, LAPSPI and/or Claimant may submit a written warning to the

Respondent with a copy of the LAPSPI Member. If within 7 (seven) days after receipt of a written warning from LAPSPI and/or Claimant, Respondent still does not perform the arbitral award, LAPSPI and/or Claimant may submit a written warning to the Respondent, with a copy of the Financial Services Authority and all LAPSPI Members.

Against the arbitral award the parties may file a request for cancellation to the Head of the District Court and/or the decision may be submitted to the Supreme Court regulated in Article 70 of Law No.30 of 1999. Article 70 of Law No. 30 of 1999, stated that:

“A request for cancellation is filed if the award is alleged to contain the following elements:

1. Letters or documents filed in the examination, after the judgment has been made, admitted falsely or otherwise declared false;
2. After the verdict is found, the document is found to be decisive, which is hidden by the opponent; Or
3. The verdict is derived from the results of the deception by one of the parties in the dispute.”