

# CHAPTER I

## INTRODUCTION

### A. Background

Disputes in the banking world always occur, where customers as consumers and banking institutions as business actors often interact quite intensively, so it is natural that there are often differences of opinion between consumers and business actors. However, if this is allowed to drag on, it will trigger a dispute. In general, customers are always in a disadvantaged position because of their weak position before the bank. So, the role of consumer protection in the banking world has a very important role, both for the customers themselves and also for the banking industry, because the industry is very dependent on public trust.<sup>1</sup>

Based on Article 45 of Law No. 8/1999 on Consumer Protection, there are two ways that consumers can resolve their problems with business actors, namely litigation and non-litigation channels. The litigation route is the most common way chosen by consumers because it relies on the provisions of the general court held in court. The presence of Law Number 8 of 1999 on Consumer Protection is a milestone in the development of consumer protection law in Indonesia.

Consumer protection law always relates to and interacts with various other fields and branches of law because, in each of these fields

---

<sup>1</sup> Yusuf Wahyu Wibowo, 2017, "Alternatif Penyelesaian Sengketa Perbankan Melalui Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI)", (Thesis of Faculty of Law, Universitas Lampung), Page 3.

and branches of law, there are always parties with the title "consumer". The fulfillment of consumer needs is highly dependent on business actors. The overall relationship between consumers and business actors can create very specific legal relationships. This legal relationship will give rise to rights and obligations that must be fulfilled by both parties, namely business actors and consumers. In this case, in reality, the fulfillment of rights and obligations between the two parties is often not considered, causing disputes between the two parties. This is the beginning of the dispute.

In common law, which uses choice of law in its consumer dispute resolution, the procedural principles of the old high courts of law (the Court of King's Bench, the Court of Common Pleas, and the common law side of the Treasury) have delayed the development of common law jurisprudence for conflict issues. These procedural shortcomings are the manner of trial by jury and the writ system.<sup>2</sup>

The dispute starts with a feeling of dissatisfaction from one party because there is another party who does not fulfill the promised performance, or, in other words, one of the parties is in default. The forms of default consist of (1) not performing the performance at all; (2) performing the performance but late or not on time; (3) performing the performance but not in accordance with what was promised; and (4) performing things that are prohibited in the agreement. The existence of

---

<sup>2</sup> Ben Chen, "Historical Foundations of Choice of Law in Fiduciary Obligations", *Journal of Private International Law*, Vol. 10, No. 2 (2014), Page 7.

these things gives the other party the right to claim compensation, with or without canceling the agreement.<sup>3</sup>

In this case, no one wants a dispute with another person. Therefore, in an agreement or business relationship, each party must prevent the possibility of disputes that can occur at any time in the future. Disputes that need to be anticipated can arise due to differences in interpretation, both regarding how to implement the clauses of the agreement and what the contents of the provisions in the agreement are, or due to other matters.<sup>4</sup> Therefore, a regulation was made, namely Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Law (UUPK). However, consumer protection law is not intended to kill the business of business actors but rather to encourage a healthy business climate and the birth of companies that are strong in facing competition through services and the provision of quality goods and/or services. The attitude of siding with consumers is also intended to increase a high level of caring towards consumers (wise consumerism).<sup>5</sup>

In order to meet the needs of business development that prioritize effectiveness, smoothness, and accuracy, the dispute resolution process between consumers and business actors is made to achieve legal certainty by also reviewing the effectiveness of the dispute resolution provisions. In

---

<sup>3</sup> Khotibul Umam, 2010, *Penyelesaian Sengketa di Luar Pengadilan*, Yogyakarta, Pustaka Yustisia, Page 6.

<sup>4</sup> Gatot Soemartono, 2006, *Arbitrase dan Mediasi di Indonesia*, Jakarta, PT Gramedia Pustaka Utama, Page 1.

<sup>5</sup> Dr. Susanti Adi Nugroho, S.H., M.H., 2019, *Manfaat Mediasi sebagai Alternatif Penyelesaian Sengketa*, Jakarta, Prenada Media Group, Page 11.

this case, the dispute resolution process can be carried out in both non-litigation and litigation dispute resolution. Litigation dispute resolution is stipulated in Article 48 of the Consumer Protection Law, where the dispute resolution refers to the provisions of the applicable public court by taking into account the provisions contained in Article 45 of the Consumer Protection Law. Meanwhile, non-litigation dispute resolution is regulated in Article 47 of the Consumer Protection Law, which is organized to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that there will be no recurrence of losses suffered by consumers.<sup>6</sup>

A dispute that occurs has basically been regulated by Indonesian legislation, which regulates the provision of means to resolve disputes for the parties. Efforts that can be taken for the parties are through the public court process (litigation) and through the process outside the court (non-litigation). The process of resolving a dispute through court or litigation provides a win-lose decision, which basically has not been able to produce common interests, tends to produce new problems, slows resolution, requires costs that are not relatively cheap, and can produce hostility for the parties to the dispute.<sup>7</sup>

Litigation dispute resolution takes a long time compared to non-litigation dispute resolution, which takes a relatively fast time, and in terms of financing, litigation disputes are quite expensive compared to

---

<sup>6</sup> Eli Wuria Dewi, 2005, *Hukum Perlindungan Konsumen*, Yogyakarta, Graha Ilmu, Page 133.

<sup>7</sup> Muhammad Andriansyah, "Pembatalan Putusan Arbitrase Nasional Oleh Pengadilan Negeri", *Jurnal Cita Hukum*, Vol. 1 No. 2 (2014), Page 332.

non-litigation dispute resolution, which is relatively cheap. In this case, in terms of effectiveness, non-litigation dispute resolution is the main choice made by business actors because it has aspects that are most in line with the needs of the business world and is efficient and effective in the settlement process to resolve disputes according to what the parties want and need.

One of the processes for resolving disputes between consumers and business actors is regulated in Article 49 of the Consumer Protection Law, namely the settlement of disputes by the Consumer Dispute Resolution Agency, abbreviated as BPSK, and/or Alternative Dispute Resolution Institutions.

The Consumer Dispute Resolution Agency is an institution that resolves consumer disputes between business actors and consumers, whose resolution is a win-win solution, in order to find the best solution for both parties to the dispute. The process of resolving consumer disputes through the Consumer Dispute Resolution Agency uses a third party or mediator who has the capacity to mediate between the two parties to the dispute. In this case, the third party must be in a neutral position and not take sides with either party.

Referring to the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number: 350/MPP/Kep/12/2001 concerning the Implementation of the Duties and Authority of the Consumer Dispute Settlement Agency in Article 4 Letter A, it states that the dispute

resolution process at the Consumer Dispute Settlement Agency can be pursued in three ways: mediation, conciliation, and arbitration. The three methods of dispute resolution are expected to produce a decision that provides a win-win solution for the parties to the dispute. Article 54 paragraph (3) of the Consumer Protection Law confirms that the decision of the Consumer Dispute Settlement Agency panel is final and binding. It is recognized that the Law is not the first and last because previously there have been several legal formulations that protect consumers scattered in several laws and regulations.<sup>8</sup>

Disputes at BPSK can be divided into several categories, including beverage and food cases, electronics, jewelry, and newspaper subscriptions, and service disputes such as the utilization of insurance services, banking and financing institutions, telecommunications, electricity, credit card services, and others.<sup>9</sup>

According to the National Consumer Protection Agency (BKPN), the majority of consumer cases involve banking and financing. Banking cases are usually between consumers as customers and business actors as banking institutions that occur, such as the loss of money from savings in a bank or the occurrence of bad credit, which makes banking institutions auction off customer assets, and customers do not accept this. However, banking disputes can not only be resolved through BPSK but can also be

---

<sup>8</sup> Abdul Halim Barkatullah, 2008, *Hukum Perlindungan Konsumen Kajian Teoretis dan Perkembangan Pemikiran*, Bandung, Nusa Media, Page 5.

<sup>9</sup> Saptaji, Kajian Hukum Proses Penyelesaian Sengketa Nasabah dan Bank pada Perspektif Kelembagaan Perlindungan Konsumen, *Hermeneutika: Jurnal Ilmu Hukum Sekolah Pascasarjana*, Vol. 3 No. 1 (2019), Page 330.

resolved through the Financial Services Sector Alternative Dispute Resolution Institution, hereinafter abbreviated as LAPS-SJK, formed by self-regulatory organizations (SROs) and associations within the financial services sector.

The regulations governing LAPS-SJK are in accordance with POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. In carrying out its activities, LAPS-SJK obtained an operational license from the Financial Services Authority (OJK) on December 29, 2020, and began operating on January 1, 2021. As the only Alternative Dispute Resolution Institution (LAPS) in the financial services sector to obtain an operational license from the OJK, LAPS-SJK replaces the roles and functions of six previously existing LAPS in the financial services sector (namely BAPMI, BMAI, BMDP, LAPSPI, BAMPPPI, and BMPPVI) and at the same time expands its scope to dispute resolution in the Fintech sector.

The initiative to establish one LAPS for the SJK was motivated by the OJK's aim to strengthen the dispute settlement mechanism, one of which is by using LAPS and facilitating access for parties to LAPS services, especially consumers. To realize this, it is necessary to increase the institutional capacity of LAPS and strengthen the legal basis for dispute resolution outside the court through LAPS in the financial services sector (Financial Services Authority, 2018). This is important because, in reality, there are still many consumers who are not aware of the existence

of LAPS or are not familiar with the out-of-court settlement process. Taking into account this need and the importance of strengthening the dispute settlement mechanism in the context of consumer protection, the LAPS-SJK was established as an integrated non-court dispute resolution institution capable of resolving all consumer disputes in the financial services sector, both conventional and Sharia, for the banking sector, capital markets, pension funds, insurance, financing, underwriting, pawnshops, venture capital, fintech, and others.<sup>10</sup>

OJK issued Financial Services Authority Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Financial Services Sector Dispute Resolution (POJK LAPS-SJK) as the legal basis for LAPS-SJK. Article 6 of the LAPS POJK expressly states that dispute resolution in the financial services sector for all PUJK is carried out by one LAPS in the financial services sector. Thus, it can be understood that the LAPS-SJK is the only consumer dispute resolution institution with the PUJK for the SJK that has obtained OJK approval. Based on this, researchers are interested in studying in more depth the establishment of the LAPS-SJK as the only out-of-court dispute resolution institution for consumer disputes in the financial services sector by the OJK. LAPS-SJK is also an independent institution that assists in providing dispute resolution services such as Mediation, arbitration, and Binding Opinions in the banking sector outside the court under the supervision of the OJK. The

---

<sup>10</sup> LAPS-SJK, 2022, *Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK)*, <https://lapssjk.id/>, (accessed on November 24, 2021 at 10.15 WIB).



benefits and objectives of LAPS-SJK are to fulfill the public's need for the availability of out-of-court dispute resolution services for the banking and financial services sector and to help increase public confidence in the banking industry so that it can grow steadily.

BPSK and LAPS-SJK have the same function, which is to act as institutions that receive complaints and requests from the public regarding disputes in the banking sector. To date, since LAPS-SJK was established, BPSK has continued to receive cases of disputes in the banking sector.<sup>11</sup> The dualism of functions between BPSK and LAPS-SJK indicates that the practice of law in Indonesia is still not optimally managed. In addition, it can be used as an indicator that the management of legal development in Indonesia is still managed with a supermarket model, so that many legal instruments are not applicable or ineffective in their practical application.<sup>12</sup> The existence of two institutions that have the same function and authority causes overlapping authority between BPSK and LAPS-SJK, thus making the boundaries of authority between institutions unclear. Then it is necessary to emphasize the competence of BPSK and LAPS so that there is legal certainty over the authority of the two institutions in adjudicating a case. Therefore, it is necessary to study how the authority and implementation of the workings of the two institutions can be compared and seek conclusions on the binding force of the decisions produced by the two institutions in banking disputes.

---

<sup>11</sup> *Ibid.*

<sup>12</sup> Artidjo Alkostar, "Fenomena-Fenomena Paradigmatik Dunia Pengadilan di Indonesia", *Jurnal Hukum UII*, Vol. 11, No. 25 (2004), Page 1-14.

Based on the background description of the problems described above, the authors set the title **BANKING DISPUTE SETTLEMENT THROUGH THE CONSUMER DISPUTE SETTLEMENT AGENCY (BPSK) AND ALTERNATIVE DISPUTE SETTLEMENT INSTITUTION IN THE FINANCIAL SERVICE SECTOR (LAPS-SJK): COMPARATIVE STUDY.**

**B. Statement of Problem**

1. How does the authority of BPSK and LAPS-SJK overlap in relation to resolving Banking Disputes?
2. How is the authority of BPSK and LAPS-SJK related to resolving Banking Disputes with a Comparative Study?
3. How is the binding power of the Decision produced by BPSK and LAPS-SJK related to resolving the Bank Dispute?

**C. Objectives of Research**

1. To find out how does the authority of BPSK and LAPS-SJK overlap in relation to resolving Banking Disputes?
2. To find out how is the authority of BPSK and LAPS-SJK related to resolving Banking Disputes with a Comparative Study?
3. To find out How is the binding power of the Decision produced by BPSK and LAPS-SJK related to resolving the Bank Dispute?

#### **D. Benefit of Research**

This research is expected to provide the following benefits:

##### 1. Theoretical Benefits

Through this research, it can reveal elements of similarities and differences in the objects being compared, provide a deeper understanding of the objects being compared, and find out the background of the similarities and differences.<sup>13</sup> The results of this research are expected to contribute to the development of science regarding the settlement of banking disputes through BPSK and LAPS-SJK, namely in the non-litigation system, and this research can contribute ideas to the development of legal science, especially those related to Business Law.

##### 2. Practical Benefits

Practical benefits for the community: this research is expected to contribute ideas for the parties involved in it, especially for the Legislative, executive, and Judicial Institutions that play a role in the preparation of laws and regulations in Indonesia.

---

<sup>13</sup> Wahyono Darmabrata, 2000, "Perbandingan Hukum dan Pendidikan Hukum", *Jurnal Hukum dan Pembangunan*, Vol. 30 No. 4 (2000), Page 320.