

## **CHAPTER ONE**

### **INTRODUCTION**

#### **A. Background**

Since Indonesia is a developing country, the national economic development that aims to increase the distribution of economic growth and national stability towards improving people's welfare requires large funds. One source of funds is derived from public savings that can be fostered through banks and financial institutions.

Banking institution is one of the most important components in the national economy and is the core of the financial system of the country. As mandated in Article 3 of Law Number 7 of 1992 concerning Banking jo. Law Number 10 of 1998 concerning Amendment of Law Number 7 of 1992 concerning Banking, that the main function of banking is an intermediary institution that connects people who experience excess funds (surplus of funds) with people who experience lack of funds (lack of funds). One of the of banking functions is as an agent of development---an institution to support the implementation of national development.<sup>1</sup>

It is an institution that collects funds from the public in the form of deposits and distributes them back to the community in the form of credit or financing.

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<sup>1</sup> Neni Sri Ismaniani, 2017, Pengantar Hukum Perbankan Indonesia, Bandung: Refika Aditama, Page 14.

Besides, banking is also an agent of trust considering that there is one principle of bank management, namely the principle of trust (*fudiciary* principle).

Disputes can occur to anyone, between individuals and individuals, individuals with groups, or groups with groups. This happens because when engaging in relations with other human beings, the interests of one party to another may conflict, leading to disputes. In these circumstances, it is hoped that humans will be able to maintain and preserve behavior and order in that shared life. However, if human behavior is not well maintained, it will lead to conflict or dispute in the relationship.

Basically, every human who lives in this world cannot live alone. Therefore, humans need relationships or interactions with other humans. Such intensive interaction between banks as business operators and customers as consumers who use banking services can lead to opportunities for friction or disputes that lead to differences of opinion and if not resolved immediately it can turn into a dispute. In this case the customer is always in a weak position before the bank. Weak customer position is much influenced by several aspects or factors. Weak customer position affects consumer behavior, both directly and indirectly, which in turn will make the people aware that the interests and rights of consumers need to be given legal protection.

In general, various parties consider that there is still no equality of position between banks and customers as parties involved in a legal relationship arising from financial transactions offered by banks. In general, customers as service

users are in a weak and lower position compared to banks as service providers. This can be seen if there are differences of opinion or disputes between customers and banks regarding the recording, calculation and or facts related to financial transactions.

If the customer raises an objection (complaint) over the difference, in general the customer is only passive towards the settlement provided by the bank. If the customer feels dissatisfied with the response and or settlement sought by his/her bank, it usually only resigns or expresses his dissatisfaction through the mass media. Through mass media, customers who feel disadvantaged by banks generally call on other customers to be more careful in conducting transactions with such bank. These negative publications can in turn have a very bad impact on the bank.

In this case the bank must respond and resolve any complaints raised by customers, especially those relating to financial transactions conducted by customers through the bank. If the bank cannot resolve the complaint submitted by the customer or the agreement is not reached, the customer and the bank will resolve the dispute outside the court. For people who are busy working, of course it will be bothered by an event that is absolute, such as formal procedural law in court.

One solution is to settle disputes outside the court, because for the community there is no need to always resolve disputes through the proceedings in court, but the parties can choose to settle disputes that occur by peaceful

means. Various kinds of facilities offered, this method can be used by the parties to the dispute. Settlement of disputes outside the court or known as alternative dispute resolution is actually not a new thing in the life of the Indonesian people, only the regulation that has only recently been incorporated into the law.<sup>2</sup>

To resolve disputes or BANK products and / or services outside the court, FSA has issued POJK NO.61/ POJK / .07 / 2020 dated December 16, 2020 concerning Alternative Dispute Resolution Institutions (hereinafter referred to as POJK No.61 of 2020) in the financial services sector . As referred to POJK POJK No.61 of 2020 in the financial services sector, in the context of customer protection and empowerment is realized by the existence of infrastructure to handle and resolve various customer complaints and complaints, then on April 28, 2015 the banking association, namely the National Bank Association (Perbanas), the Association of State-Owned Banks (Himbara), the Association for Regional Development Banks (Asbanda), the Association of Indonesian Sharia Banks (Asbindo), the Association of Indonesian International Banks (Perbarindo) established an Alternative 9 Indonesian Banking Dispute Settlement Institution (Asbindo) hereinafter abbreviated as LAPSPI) which officially began operating in early 2016.<sup>3</sup>

The establishment of LAPSPI is inseparable from the fact that in the settlement of consumer complaints by the Banking Institution often no

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<sup>2</sup> Jimmi Joses Sembing, 2011, *Cara Menyelesaikan Sengketa di Luar Pengadilan*, Jakarta: Transmedia Pustaka, Page 66.

<sup>3</sup>Yusuf Wahyu Wibowo, "Alternatif Penyelesaian Sengketa melalui Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia", *Jurnal Ilmu Hukum*, Vol. 3 No 2, ISSN: 2460 1543 (Januari,2016), Page 78.

agreement is reached between the Consumer and the Banking Institution. To overcome this, an alternative Institution for Dispute Resolution outside the Court is needed, which is handled by people who understand the world of banking and are able to resolve disputes quickly, cheaply, fairly, and efficiently.

As stated in LAPSPI Regulation No. 02 / LAPSPIPER / 2017 concerning Adjudication Rules and Procedures, that LAPSPI is an institution to provide mediation, adjudication and arbitration services. Supporting strong and healthy consumer and banking industry protection, LAPSPI is here to provide banking dispute resolution services quickly, fairly, measurably, cost effectively and efficiently through three services: Mediation, Adjudication and Arbitration.<sup>4</sup>

The researcher considers that the discussion of the banking dispute resolution agency is very important because it provides information to the public about the processes and procedures for resolving banking disputes.<sup>5</sup>

Based on the background above, the researcher intends to examine the problem of applying the resolution of Indonesian banking disputes through the adjudication service in LAPSPI and to write a research in the form of a thesis entitled **THE USING OF ADJUDICATION IN SETTLING THE BANKING DISPUTE IN LAPSPI**

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<sup>4</sup> Felix Oentoeng Soebagjo, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Dibidang Perbankan", *Jurnal Ilmu Hukum*, Vol. 5 No 4, ISSN:2471-4067 (Maret, 2007), Page 4.

<sup>5</sup> Heru Soeperptomomo. "Analisis Ekonomi Terhadap Hukum Perbankan", *Jurnal Ilmu Hukum*, Vol. 9 No 20, ISSN: 2099-7087 (Juni, 2002), Page 108.

**B. Statement of Problem**

Based on this background, the researchers formulated the problem as follows:

1. How to use Adjudication in the settlement of banking disputes?
2. How is the legal force of the Adjudication decision for the parties?

**C. Objective of Research**

This research is not solely carried out, unless an objective is expected to be achieved. The objectives to be achieved in this study include:

1. To find out the use of adjudication in the settlement of banking disputes
2. To find out the legal strength of the adjudication verdict for the parties

**D. Benefit of Research**

There are some benefits of this research, namely:

1. Theoretical Aspect

The results of this study are expected to provide insight development in the field of legal science, specifically in the area of civil law regarding the use of adjudication services in LAPSPI.

2. Practical Aspect

The results of this study are expected to be used as input for banks in order to improve the laws and regulations relating to the resolution of Indonesian Banking disputes and can be used as information material for the general public, and for those who are engaged in banking activities (customers) in

order to know and understand matters relating to the existence and use of banking dispute resolution at Alternative Indonesian Banking Dispute Settlement Institutions through adjudication services.