



ISSN 2809-7572 (Online)

YURIS (Journal of Court and Justice)

Vol. 1 Issue. 1, (2022)

<https://journal.ifpublisher.com/index.php/jci>

Banking Dispute Settlement Through Alternative Dispute Resolution (Claims of Danamon Bank Customers)

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ABSTRACT

The development of banking business in Indonesia is managed by several parties, namely the banking sector itself which has a role as business actor and creditor in relation to its role in providing banking services to the public and other parties are debtors, namely consumers (customers) or users of banking services. However, in practice, both of them are often involved in disputes. Seeing these conditions, alternative efforts are needed in resolving disputes ADR (Alternative Dispute Resolution). The purpose of this research is to increase the author's knowledge and ability in analyzing banking dispute resolution rules and increase the author's knowledge and ability in analyzing ADR legal problems according to Constitution No. 30/1999 concerning on the Arbitration and Alternative Dispute Resolution. The results of this study indicate that (1) Settlement of banking disputes through Alternative Dispute Resolution (ADR) according to Law no. 30 of 1999 can be known from banking disputes, the factors that cause banking disputes and the legal basis for the settlement of banking disputes through Alternative Dispute Resolution (ADR); and (2) Banking dispute resolution procedures through Alternative Dispute Resolution (ADR) according to Law No. 30/1999 consists of the pre-mediation stage, the mediation stage and the mediation outcome stage.

Keywords: *Alternative Dispute Resolution (ADR), Banking Dispute, Legal Problems*

INTRODUCTION

The development of the banking business in Indonesia is managed by several parties, namely the banking sector itself which has a role as business actor and creditor in relation to its role in providing banking services to the public and other parties are debtors, consumers (customers) or users of banking services. In general, the relationship between banks and customers is based on a system of trust. However, in practice, both of them are often involved in disputes or disputes.¹

One of the banking disputes that occurred was in the case experienced by Danamon Bank. The case contains customer demands regarding a request for a checking account that has not been served by Danamon Bank because the customer has visited Danamon Bank and has not received the proper service and has not received a satisfactory answer and seems to have been ignored. With this case, the customer, on behalf of Daud Wibawa, requested assistance from the Indonesian Community Legal Justice Legal Aid Institute - LBH KHMI Pusat to resolve the case.

Furthermore, Budiman, SH, an advocate/lawyer at Indonesian Community Legal Justice LBH KHMI center, obtained a power of attorney on December 3, 2013. Budiman, SH on behalf of Daud Wibawa conveyed to the head of Danamon Bank Pecenongan Branch that:

1. Client as an account holder at Danamon Bank Pecenongan Branch with No. Account : 23703200.
2. Client has visited the Danamon bank several times but has not been served properly as a customer who has not yet received a satisfactory answer and seems to have been ignored.
3. The client wants to request information and explanation regarding the problem, on February 25, 2004 there was an RTGS transaction of IDR 300,000,000,-
4. Client would like to request a copy of the bank statement from account opening until November 2013.
5. Client requests applications for opening, dealing and closing deposits related to the client's account.
6. Client stated to extend the ATM of Danamon Bank and hopes that Danamon Bank can resolve the client's problems.
7. The request for information is related to the Article 17 of Constitution No. 18/2003 concerning on Advocates and Constitution No. 14/2008 concerning on Public Information Disclosure in conjunction with Constitution No. 10/1998 concerning on Banking.

The letter has been copied to the Governor of Bank Indonesia, the

¹ Muhammad Audi and St. Laksanto Utomo, "Mediasi Perbankan Dalam Penyelesaian Sengketa Antara Nasabah Dan Bank," *SUPREMASI Jurnal Hukum* 2, no. 2 (February 22, 2021): 1–14, <http://jurnal.usahid.ac.id/index.php/hukum/article/view/114>.

chairman of the Indonesian Financial Services Authority (OJK), the president director of PT. Bank Danamon Tbk and clients. On May 6, 2014, Danamon Bank responded to the customer's complaint letter, Daud Wibawa, and sent a reply letter to the Indonesian Legal Aid Institute (LBH) which contains:

1. Based on the data, Daud Wibawa's customers are listed as customers of Danamon Bank's Gajah Mada Branch and Pecenongan Jakarta Branch.
2. By the complaints submitted by customers, we have followed up by providing explanations to customers when customers came to the Danamon Pecenongan and Gajah Mada branch offices around November 2013 and March 2014 and to the Danamon Prapatan branch office around March 2014.
3. Related to the request for information and explanation of RTGS transaction on February 25, 2004 within the total of Rp 300,000,000,- Danamon Bank Pecenongan branch office officers have provided photocopies of transaction documents and provided explanations to customers by showing the original transaction documents.
4. On March 5, 2014 a meeting was proposed between the customer and the officers of Danamon Bank Pecenongan branch office. In the meeting our officers have provided a copy of the document requested by the customer and for this there has been a receipt (photocopy is attached).²

Based on the described case above, it is known that Danamon Bank has fulfilled the request from the customer. However, the customer feels that he has not received a satisfactory answer from Danamon Bank. The case shows that the efforts made by customers starting from the complaint stage to efforts to resolve disputes have not met customer expectations. In fact, if viewed from Bank Indonesia Regulation (PBI) No. 7/7PBI/2005 concerning Settlement of Customer Complaints, as amended by PBI No. 10/10/PBI/2008, banks have an obligation to resolve any customer complaints. Even though the bank has the intention to complete it, in reality it has not provided satisfaction to customers.

The dissatisfaction felt by the customer refers to the existence of legal problems because there is a sense of injustice felt by the customer. A sense of injustice arises as a result of treatment that is not in accordance with considerations based on norms and morals. The dissatisfaction felt by the customer has the potential for a dispute between the customer and the bank to be resolved. These various problems have given rise to efforts to resolve disputes between customers and banks through courts or negotiations, conciliation, mediation and arbitration as stipulated in Law No. 30/1999

² Sofian Sidiq, "Sistem Monitoring Server Core Banking: Studi Kasus Bank Danamon Di Indonesia," *JIKA (Jurnal Informatika)* 1, no. 1 (May 8, 2018), <http://jurnal.umt.ac.id/index.php/jika/article/view/747>.

concerning Arbitration and Alternative Dispute Resolution.

This alternative is expected to be a win-win solution which will ultimately satisfy both parties as an effort to resolve disputes. Actually, the forms of dispute resolution using ADR have several forms that can be applied in dispute resolution, such as consultation, negotiation, mediation, conciliation, and expert judgment.³

Based on all the descriptions above, it is necessary to conduct further analysis regarding the legal problems of banking dispute resolution through Alternative Dispute Resolution (ADR) according to Law No. 30/1999 concerning on Arbitration and Alternative Dispute Resolution.

Based on the described introduction above, the purpose of this research is to analyze the settlement of banking disputes through Alternative Dispute Resolution (ADR) according to Constitution No. 30/1999 and the problems of resolving banking disputes through Alternative Dispute Resolution (ADR).

RESEARCH METHODOLOGY

The method used in this research is descriptive qualitative method and the research type is normative. Normative in legal research is a research that examines applicable legal norms, which in this research used Constitution No. 30/1999 concerning on Arbitration and Alternative Dispute Resolution. the approach used in this research is case approach which an approach used applicable regulatory parameters to solve law issues, and the issue in this research is banking dispute resolution through Alternative Dispute Resolution (ADR) according to Constitution No. 30/1999. This research analysis used library research because it is based on literature related to main discussion.

RESULT AND DISCUSSION

Banking Dispute Resolution Through Alternative Dispute Resolution (ADR) according to Constitution No. 30/1999

Dispute problems begin in a situation where two or more parties are faced with different interests and needs. Disputes arise when the party who feels aggrieved only harbors feelings of dissatisfaction or concern.⁴ The party who feels aggrieved conveys his dissatisfaction to the second party, and if the second party does not respond and satisfy the first party, and shows differences of opinion between them, what is called a dispute occurs.⁵

³ Ryan Murphy and Frances Burton, "Alternative Dispute Resolution (ADR)," in *English Legal System* (Abingdon, Oxon ; New York, NY : Routledge, 2020. | Series: Spotlights: Routledge, 2020), 389–435,

<https://www.taylorfrancis.com/books/9781317666707/chapters/10.4324/9781315768526-14>.

⁴ Edi As'adi, *Hukum Acara Perdata Dalam Perspektif Mediasi (ADR) Di Indonesia*, 1st ed. (Yogyakarta: Graha Ilmu, 2012).

⁵ Afrizal Mukti Wibowo, "Perbandingan Hukum Arbitrase Dan Alternatif Penyelesaian Sengketa Arbitrase Online Indonesia Dan Cina," *Audito Comparative Law Journal (ACLJ)* 2, no. 2 (May 31, 2021): 110–118, <https://ejournal.umm.ac.id/index.php/audito/article/view/16372>.

One of the problems of dispute that becomes the main focus is social problems in the scope of fund associations or banking. Banking has a series of procedures that are contained in the legalization provisions that are binding and become an authority by Bank Indonesia. Banks, whose main function is to collect public funds, use various promises to offer their products so that people are interested in saving their funds in the bank. Offers in the form of high interest savings, attractive prizes and various other conveniences make people choose to choose a bank, sometimes without even examining the bank's credibility.

Related to the dispute that occurs between customer and bank, an effort is needed to resolve the dispute that occurs. Generally, dispute resolution efforts are carried out through judicial and arbitration channels, but in fact these efforts are difficult considering that not all customers are financially able to follow the settlement process because it is too long and procedural so it requires a lot of money and time. For this reason, alternative efforts are needed in resolving disputes ADR (Alternative Dispute Resolution).

Alternative Dispute Resolution (ADR) is a concept that includes various forms of dispute resolution other than the judicial process through legal means, whether based on a consensus approach, such as negotiation, mediation and conciliation or not based on a consensus approach, such as arbitration. Arbitration takes place on the basis of an adversarial approach (dispute) that resembles a judicial process so as to produce a winning and losing party.⁶

The settlement of banking disputes through the Alternative Dispute Resolution (ADR) has a legal basis that regulates it. Based on the Law of the Republic of Indonesia Number 30/1999 concerning on the arbitration and alternative dispute resolution, which consider that:

- a. Based on the applicable laws and regulations, the settlement of civil disputes in addition to being able to be submitted to the general court is also open to the possibility of being submitted through arbitration and alternative dispute resolution.
- b. The current constitution and regulations for dispute resolution through arbitration are inconsistent with the development of the business world and the law in general.
- c. Based on the considerations as referred to in letters a and b, it is necessary to enact a Law on Arbitration and Alternative Dispute Resolution.

The existence of a banking dispute is influenced by several factors consisting of:

- a. Bank Internal Factor

⁶ Meylan M Maramis, "Analisis Penyelesaian Tindak Pidana Penganiayaan Melalui Pilihan Penyelesaian Sengketa Alternative Dispute Resolution," *Jurnal Hukum UNSRAT* 21, no. 4 (2013).

There are several reasons behind the causes of banking disputes in particular, including:⁷

- 1) The low ability or sharpness of the bank to analyze the feasibility of creditor requests submitted by debtors.

It means that there is a problem with the ability of banking analysts which carried out unprofessionally. This is because bank account officers and credit analysis are less able to carry out their duties properly and procedurally. Besides, another cause is the dullness of bank's feasibility analysis because the leadership is under pressure from third parties to grant creditors' requests, either because of the inability of creditors to refuse debtors' requests or an expensive lending (credit) strategy. The policy of collecting funds (banking) from the public, both in the form of savings and deposits, has encouraged banks to implement a credit distribution strategy that exceeds the reasonable level.

- 2) Weak banking information systems and banking supervision and administration systems.

It is the duty of the leadership to conduct a comprehensive analysis of banking supervision and administration.

- 3) There is excessive interference from shareholders in decision making loans (credit) in banking.
- 4) There is an imperfect credit guarantee binding.

It is alleged that bank loan guarantees are the second source of loan repayment funds. If the debtor is unable or unwilling to pay off the outstanding credit balance and interest, the bank can execute the guarantee.

- b. The factor of Debtor

Bank debtors consist of individuals or companies. The origin of funds or sources of interest and installment payments for individual debtors is salaries and wages. Each installment of fixed income receipts will disrupt the debtor's financial liquidity, thereby affecting the smooth payment of interest and/or bank loan installments (credit).⁸

The causes of banking disputes can be seen in debtors who are closely related to personal disturbances to the debtor, whether it is due to an accident, illness, death or divorce.⁹ There are three factors that cause banking disputes to become problematic, including:

- 1) The problem of miss management.

⁷ Hadi Ismato et al., *Perbankan Dan Literasi Keuangan*, 1st ed. (Sleman: Deepublish, 2019).

⁸ Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya*, 1st ed. (Jakarta: Kencana, 2017).

⁹ Mardalena Hanifah, "Kajian Yuridis : Mediasi Sebagai Alternatif Penyelesaian Sengketa Perdata Di Pengadilan," *Jurnal Hukum Acara Perdata ADHAPER* 2, no. 1 (2016): 1–13, <https://jhaper.org/index.php/JHAPER/article/view/21/28>.

- 2) Lack of knowledge and experience of the owner in the field of business.
- 3) Fraud.¹⁰

c. External Factor

Regarding the external factors, it can be seen in the business conditions and the debtor's financial liquidity may decrease due to the influence of various obstacles that beyond the ability of the debtor to control it. Furthermore, the decline in financial liquidity will affect the ability of debtors to pay their debts. The following below are some external factors that cause banking disputes that are behind them:

- 1) Developments in economic conditions or business fields that are detrimental to the debtor's business activities.

Based on this problem, for debtors the impact of economic development or unprofitable business fields is a decrease in product sales results which can result in the debtor suffering losses. Therefore, the company's source of funds will have an effect on paying credit, namely profit after tax and depreciation funds. Thus, with the depreciation, profits will decrease which will also affect the debtor's ability to pay off his debts.

- 2) Natural disaster factors such as earthquakes, floods, dry season storms, news and others. These disasters often damage or reduce the production capacity, production equipment of the debtor, as a result, the amount of production, product sales and profits decrease and the impact affects the debtor's financial liquidity.
- 3) Factors Government Regulations (PP) issued to develop financial economic conditions or certain business sectors that have an unfavorable impact on other business sectors. If the debtor's business sector is affected by the unfavorable impact of the PP, it can be the cause of the decline in operating results and the debtor's financial liquidity.¹¹

Furthermore, there are several external factors in general that underlie these three factors, including:

1. Debtor's business failure
2. Declining the economic activity and high bank interest rates
3. Utilization of an unhealthy competitive climate in the banking world by irresponsible debtors

¹⁰ J. David Diltz and Mark E. Bayless, "An Experimental Study Of Commercial Bank Loan Officer Behavior," *Journal of Applied Business Research (JABR)* 5, no. 4 (October 25, 2011): 30, <https://clutejournals.com/index.php/JABR/article/view/6331>.

¹¹ Herry Goenawan Soedarsa and Apri Irianti Raharjo, "Analisis Kredit Bermasalah Dan Penghapusan Kredit Bermasalah Terhadap Peningkatan Net Profit Margin (Studi Kasus Pada PT. Bank Rakyat Indonesia (Persero), Tbk Tahun 2011-2013)," *Jurnal Akuntansi dan Keuangan* 6, no. 2 (September 30, 2015), <http://jurnal.ubl.ac.id/index.php/jak/article/view/579>.

4. The disaster that befell the debtor company.¹²

Banking Dispute Resolution Procedures Through Alternative Dispute Resolution (ADR) According to Constitution No. 30/1999

The settlement of customer complaints by banks is not always able to provide satisfaction, resulting in disputes between customers and banks, which if it drags on and is not handled immediately will have an impact on the reputation of the bank, reduce customer trust in banking institutions and can harm the rights of customers. As stated in the provisions of constitution number 30/1999 that dispute resolution can be carried out in addition to through the courts and can be carried out outside the court.

There are various methods are used for dispute resolution including through negotiation, arbitration and others as regulated in Law no. 30 of 1999 or can also be resolved through the courts. The difficulty of resolving disputes through courts or arbitration which takes a long time and a fairly complicated process, makes Bank Indonesia seek a dispute resolution that can be carried out with a simple, inexpensive and fast process through a banking mediation institution. Banking mediation is a dispute resolution process that involves a mediator to assist the disputing parties to reach a settlement in the form of a voluntary agreement on part or all of the disputed issues. The assistance provided is carried out by facilitating dispute resolution by calling, meeting, listening and motivating customers and banks to reach an agreement without providing recommendations or decisions.

Disputes submitted by the bank and the customer must comply with the procedures in accordance with Bank Indonesia Regulation Number 8/5/PBI/2006 which consists of the following requirements:

- a. Subjective terms, are conditions relating to the party submitting the dispute, namely the customer and customer representatives.
- b. Objective conditions are requirements related to the object of dispute in Article 6 of Bank Indonesia Regulation No. 8/5/PBI/2006, namely claims against disputes that have a maximum financial claim value of IDR 500,000,000.00, without financial claims resulting from immaterial losses.

Regulation on Alternative Dispute Resolution (ADR) in Law No. 30/1999 looks very common even in Law No. 30/1999 various dispute resolution mechanisms which are included in the Alternative Dispute Resolution (ADR) are not defined in detail. In Article 1 No. 10 of Law No. 30/1999 only states that alternative dispute resolution is an institution for resolving disputes or differences of opinion which is carried out through a procedure agreed upon by

¹² Imam Muhasan, "Mekanisme Penghapusan Kredit Macet Pada Bank-Bank BUMN (Antara Rezim Korporasi vs Rezim Keuangan Negara)," *Jurnal Manajemen Keuangan Publik* 1, no. 2 (November 11, 2017): 58–67, <https://jurnal.pknstan.ac.id/index.php/JMKP/article/view/148>.

the parties, namely an out-of-court settlement by means of consultation, negotiation, mediation, conciliation or expert judgment.

If the dispute resolution carried out through arbitration and alternative dispute resolution cannot resolve the dispute, then the judiciary or litigation route is the final goal as a case breaker. Therefore, it is necessary to know the pattern of banking dispute resolution through ADR. This, as explained in the provisions of PBI No. 8/5/PBI/2006 such following below:

a. Pra Mediation Stage

The initial stage of the banking mediation process begins with the customer or customer representative submitting a dispute resolution to Bank Indonesia in accordance with article 7 paragraph (1) which reads: "Submission for dispute resolution in the context of Banking Mediation is carried out by the Customer or Customer Representative". To be able to file a dispute through banking mediation there are several requirements that must be met by the customer, including:

- 1) The customer must submit in written the desire to resolve the dispute through mediation by filling out the Dispute Settlement Submission Form available at the nearest banks. This form is addressed to the Directorate of Banking Investigation and Mediation (DIMP), Bank Indonesia, accompanied by a copy sent to the bank concerned.
- 2) The submitted dispute should be a civil dispute
- 3) Before submitting a dispute resolution through mediation, the customer should resolve the problem with the bank concerned through the customer complaint process.

b. Mediation Stage

The mediation stage begins when the parties agree to use banking mediation as an alternative dispute resolution and sign a Mediation Agreement (agreement to mediate). With the signing of this mediation agreement, the parties must obey and obey the rules of banking mediation. The implementation of the banking mediation processes up to the signing of the Deed of Agreement requires a relatively short time, which is a maximum of 30 (thirty working days starting from the signing of the mediation agreement). with the next 30 (thirty) working days (Article 11 Paragraphs (1) and (2)).

c. Mediation Result

The deed of agreement signed by the customer and the bank already has binding power to the parties and is final. Article 13 explains that banks are obligated to carry out the results of the settlement of banking disputes that have been agreed upon and set forth in the Deed of Agreement. The agreement deed is the result of a long deliberation between the bank and the customer so that a win-win solution is

obtained for the parties.

CONCLUSION AND SUGGESTION

Conclusion

Settlement of banking disputes through Alternative Dispute Resolution (ADR) according to Constitution No. 30/1999 can be known from various principles, such as (1) factors that cause banking disputes, which consist of internal bank factors; bank debtor factor; and bank external factors; (2) The legal basis for the settlement of banking disputes through Alternative Dispute Resolution (ADR) is Article 6 of the Law. No. 30/1999 which describes the non-litigation settlement model through ADR.

Banking dispute resolution procedures through Alternative Dispute Resolution (ADR) according to Constitution No. 30/1999 consists of (1) pre-mediation stage; (2) mediation stage; (3) mediation stage result.

Suggestion

By the existence of banking disputes, the factors that cause banking disputes, and the legal basis for resolving banking disputes through ADR, the settlement of banking disputes should be resolved in accordance with procedures in accordance with the laws that govern it.

Mediation taken by both parties in a dispute between the customer and the bank should be able to use mediation first, where BI acts as a mediator. BI as the authority holder of the Indonesian banking world is expected to provide inputs that are more directed towards reaching consensus.

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