



# Legal Analysis Of Banking Dispute Resolution Through The Consumer Dispute Resolution Agency From The Perspective Of Consumer Protection Law

Muhammad Ali Hadidie Parinduri

YPK Medan Accounting Academy, Indonesia

Correspondence Author : [aditparinduri@gmail.com](mailto:aditparinduri@gmail.com)\*

**Abstract.** Settlement of banking disputes through BPSK in the protection of banking customers is a legal defect because it is the authority of the Alternative Dispute Resolution Institution for the Financial Services Sector, BPSK is more appropriate for consumer disputes within the scope of industry and trade. The formulation of the problem in this thesis is how is the legal regulation of consumer protection for banking institutions, how is the settlement of banking disputes through alternative institutions in customer protection, and how are the judges' legal considerations in the Supreme Court Decision of the Republic of Indonesia Number 253 K/Pdt.Sus-BPSK/2017. The research method used is descriptive analysis that leads to normative juridical legal research, namely research conducted by referring to legal norms, namely researching library materials or secondary materials. Secondary data by processing data from primary legal materials, secondary legal materials and tertiary legal materials. The results of the study indicate that legal regulation of consumer protection for banking institutions is regulated in Law Number 21 of 2011 and Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 in conjunction with Number 1/POJK.07/2014. Settlement of banking disputes through alternative institutions in customer protection is settlement by Arbitration between bank customers and the banking sector is the authority of the Alternative Dispute Settlement Institution for the Financial Services Sector. The judge's legal considerations after carefully examining the memorandum of cassation dated December 7, 2016 and the counter memorandum of cassation dated December 28, 2016 are related to *Judex Facti's* considerations, in this case The Kisaran District Court is not wrong in applying the law because the *a quo* case is a breach of contract that originates from a credit agreement.

**Keywords :** Dispute, BPSK, Alternative Dispute Resolution.

## 1. INTRODUCTION

Debt disputes arise from loan agreements. Literally, the regulation of debt disputes is not found in the provisions of the Civil Code, but when connected with a disagreement between two parties who are in a legal relationship, the Civil Code tends to use the term default. Therefore, debt disputes are a civil dispute.

If someone does not pay off their debt, they are deemed to have committed an act of breach of promise or *default* Article 1243 of the Civil Code states:

“Compensation for costs, losses and interest due to failure to fulfill an obligation, only begins to be required if the debtor, after being declared negligent in fulfilling his obligation, continues to neglect it, or if something that must be given or made can only be given or made within a time limit that has elapsed.”

According to Article 1243 of the Civil Code, a person is declared to have committed a breach of promise or *default* if he does not fulfill the obligations required of him even though the grace period given to him to carry out these obligations has passed. Debt disputes are civ-

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il disputes which are emphasized in several jurisprudence, including based on the Supreme Court Decision dated March 11, 1970 Number 93K/Kr/1969 which expressly states "Disputes regarding debts are civil disputes." In a dispute, differences of opinion and prolonged differences usually cause the failure of the process of reaching an agreement. This situation usually causes a breakdown in healthy communication channels so that each party seeks a way out without considering the fate or interests of the other party. In order to create an effective dispute resolution process, the prerequisite that must be met is that both parties must equally pay attention to or uphold the right to hear and be heard. Thus the process of dialogue in finding common ground (*common ground*) which will be the stage for the new dispute resolution process to run. If the stage of awareness of the importance of this step, then the dispute resolution process does not run in the true sense.

Examination of cases through litigation is a conventional dispute resolution carried out in court (*adversarial*). The disputing parties are positioned as antagonists to each other, while what is meant by non-litigation is the resolution of problems outside the court where the parties are directly involved to find a way out that is a win-win solution. Many disputes, especially in the scope of trade, are resolved outside the courts because the dispute resolution process through the courts takes a long time because there are legal efforts up to the Supreme Court level, which is detrimental to one of the losing parties because the nature of the settlement is not a win-win solution and the judicial process is open to the public so that confidentiality is not maintained.

In Indonesia, it is difficult to obtain adequate (complete) regulations regarding dispute resolution through alternative dispute resolution (APS). In the provisions of Article 1 number 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it is stated: "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court by means of consultation, negotiation, mediation, conciliation, or expert assessment."

In addition to the existence of an alternative dispute resolution institution (APS), in its development a consumer protection institution emerged with the issuance of Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as the Consumer Protection Law) is a phenomenon in society where the position of consumers in general is still weak in the fields of economy, ducation, and consumer bargaining power against business actors. It should also be noted that, in addition to the Consumer Protection Law, there are other regulations that also regulate consumer protection, namely the

Regulation of the Minister of Trade of the Republic of Indonesia Number 72 of 2020 concerning the Consumer Dispute Resolution Agency and the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency.

By looking at the problems as explained above, there is an institution to develop consumer protection efforts, namely the Consumer Dispute Resolution Agency (hereinafter abbreviated as BPSK) as stated in the Consumer Protection Law. Based on Article 1 number 11 of the Consumer Protection Law, it is stipulated that BPSK is an agency tasked with handling and resolving disputes between business actors and consumers. Referring to the definition of BPSK, it can be seen that those who can dispute in BPSK are Business Actors and Consumers. The existence of BPSK will certainly be part of equalizing justice, especially for consumers who feel disadvantaged by business actors. This is because disputes between consumers and business actors have a small case nominal so that it is impossible to file a dispute in court which of course is not comparable between the cost of the case and the amount of losses claimed.

BPSK is also formed as a forum outside the court to resolve disputes arising between Business Actors and Consumers due to the consumer's position which is usually socially and financially unbalanced with business actors. In addition, it can also be interpreted that BPSK is one of the alternatives for resolving consumer disputes outside the court. Mr. Hariang as the panel of judges of the Bandung City BPSK explained that the formation of BPSK aims to resolve consumer disputes by upholding the resolution of consumer disputes through deliberation to reach a consensus, so that it is hoped that consumer disputes between business actors and consumers can be resolved outside the court by using one of the alternatives, namely consumer dispute resolution at BPSK.

## **2. LITERATURE REVIEW**

1. Consumer Protection is any effort that ensures legal certainty to provide protection to consumers. Consumers are every person who uses goods and/or services available in society, whether for the benefit of themselves, their families, other people, or other living things and not for trading. Basically, there are two important legal instruments that form the basis of consumer protection policies in Indonesia.
2. The term credit agreement cannot be found explicitly in Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 (Banking Law), only to find out the form of the agreement can be found in the provisions of Article 1 point 11 of

the Banking Law, which explains that credit is the provision of money or bills that can be equated with it, based on an agreement or loan agreement between the bank and another party that requires the borrower to pay off his debt after a certain period of time with the provision of interest.

### **3. METHODS**

This research is descriptive analytical in nature, The meaning is that this research is a research that describes, examines, explains and analyzes problems in resolving banking disputes through BPSK which are linked to court decisions which are then analyzed. This research is a scientific activity based on certain methods, systematics and thoughts that aim to study a particular law by analyzing it. In relation to the type of research used, namely normative juridical, with the aim of obtaining qualitative results, the approach taken is the case approach. The case approach is carried out by examining cases related to legal issues that are used as topics of discussion in a writing.

### **4. RESULTS**

When resolving disputes that occur in the community's life, especially those related to business and trade traffic, they are given the freedom to seek dispute resolution that best suits their interests. In general, dispute resolution is categorized into two, namely:

- a. dispute resolution through litigation, and
- b. settlement through non-litigation.

Examination of cases through litigation is a conventional dispute resolution carried out in court (adversarial). The disputing parties are positioned as antagonists to each other, while what is meant by non-litigation is the resolution of problems outside the court where the parties are directly involved to find a way out that is win-win solution.

#### **Chronology of the Case**

Banking disputes in Supreme Court decision Number 253 K/Pdt.Sus-BPSK/2017 related to debts between Erwan Efendi and PT. Bank Tabungan Pensiunan Nasional Tbk. The case began when Erwan Efendi used the Consumer Dispute Resolution Agency (BPSK) of Batu Bara Regency to resolve his debt dispute with PT. Bank Tabungan Pensiunan Nasional Tbk. Where PT. Bank Tabungan Pensiunan Nasional Tbk argued that the settlement of debts must go through a financial services institution because the clause regarding the settlement of the dispute has been expressly regulated in the credit agreement.

Then after the BPSK Batu Bara arbitration decision, PT. Bank Tabungan Pensiunan Nasional Tbk filed an objection with a letter of objection dated October 18, 2016 which was received and registered at the Kisaran District Court Clerk's Office on October 18, 2016 in Register Number 88/Pdt.Sus-BPSK/2016/PN.Kis.

The reasons and legal basis for the objection submitted by PT. Bank Tabungan Pensiunan Nasional Tbk are:

1. BPSK Batu Bara does not have absolute authority to examine and decide on the case filed by Erwan Efendi/customer of PT. Bank Tabungan Pensiunan Nasional Tbk. PT. Bank Tabungan Pensiunan Nasional Tbk is of the opinion that arbitration settlement between debtors/consumers/bank customers and creditors/banks/financial services institutions is the authority of the Alternative Dispute Resolution Institution for the Financial Services Sector.
2. The objection applicant never received a copy of the objection respondent's request for dispute resolution as an attachment to his summons.  
PT. Bank Tabungan Pensiunan Nasional Tbk is of the opinion that the BPSK Batu Bara Regency Arbitration Decision Number 359/Arbitration/BPSK/BB/X/2015 dated September 30, 2016 was born/issued from an incorrect process and is not based on law.
3. Regarding the facts of the case in the decision of the BPSK Batu Bara Regency Number 359/Arbitration/BPSK/BB/X/2015 dated 30 September 2016, it is incorrect and not based on law.
4. The witnesses presented by the objecting respondent have no evidentiary value in the a quo case and the written evidence presented actually proves that the objecting respondent has committed an act of breach of promise (default).
5. The legal considerations of the BPSK Batu Bara Regency panel in the BPSK Batu Bara Regency arbitration decision Number 359/Arbitration/Bpsk/Bb/X/2015 dated 30 September 2016 were not careful, wrong, and contrary to the principles of justice, propriety, benefit and/or legal certainty.
6. The BPSK Batu Bara Regency arbitration decision Number 359/Arbitration/BPSK/BB/X/2015 dated 30 September 2016 exceeds the authority permitted by law (*ultra vires*).

The BPSK Assembly of Batu Bara Regency only adjudicates Consumer disputes including the authority to determine compensation. However, ironically, the BPSK Arbitration Decision of Batu Bara Regency in the a quo case has gone too far in deciding it, namely:

- a. declare that the Credit Agreement as made and signed jointly between the Consumer and the Business Actor is null and void and has no binding legal force;
- b. stated that the objection applicant who will conduct the Execution Auction of Mortgage Rights through the Kisaran State Asset and Auction Service Office (KPKNL) is acting against the law.
- c. declare the Auction Determination and Auction Implementation as invalid and null and void by law, which have been determined/implemented by the State Assets and Auction Services Office (KPKNL) as a Government Agency under the Ministry of Finance.
- d. To order the objection applicant to cancel the auction that will and/or has been carried out by means of the Mortgage Rights Execution Auction through the Kisaran KPKNL;
- e. To order the objection applicant to write off the arrears fines, penalties, current interest and others.

## **5. DISCUSSION**

Based on Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009, according to the provisions of Article 30 paragraph (1), the authority of the Supreme Court at the cassation level is to annul decisions or rulings of courts from all judicial areas because:

1. Not authorized or exceeding the limits of authority;
2. Misapplying or violating applicable laws; and
3. Negligence in fulfilling the requirements required by statutory regulations threatens that negligence with the annulment of the decision in question.

Based on these provisions, the Supreme Court is only authorized to formally assess whether the *judex pacti* has implemented the applicable legal provisions or not. In the Supreme Court decision Number 253 K / Pdt.Sus-BPSK / 2017, the Supreme Court is of the opinion that the Kisaran District Court with its decision Number 88 / Pdt-Sus-BPSK / 2016 / PN.Kis was not wrong in applying the law. The consideration of the *judex pacti* in canceling the BPSK Batu Bara Regency arbitration decision Number 359 / Arbitration / BPSK / BB / X / 2015 dated September 30, 2016 was correct and correct, considering that the case in the BPSK decision was a case of default originating from a credit agreement, so that BPSK does not have the authority to adjudicate a case of default originating from the credit agreement.

The Supreme Court's opinion regarding the annulment of the BPSK Batu Bara Regency arbitration decision in decision Number 359/Arbitration/BPSK/BB/X/2015 dated Sep-

tember 30, 2016 by the Kisaran District Court, is based on the consideration that the legal relationship between the debtor and the banking party is based on a contractual relationship that has been mutually agreed upon and made legally according to the provisions of Article 1320 of the Civil Code concerning the valid requirements of the agreement, thus in accordance with the provisions of Article 1338 of the Civil Code, so that all provisions regulated in the contractual relationship are binding like laws that must be obeyed by the parties and must be implemented in good faith. In the contractual agreement as stated in the credit agreement in question, both parties have agreed to choose a dispute resolution forum through a general judicial body, namely the District Court. Thus, the authority of the BPSK Batu Bara Regency to examine and try the case is not absolutely authorized, in other words, the absolute authority to resolve the case is the authority of the district court, therefore the BPSK Batu Bara Regency decision must be annulled.

Disputes regarding breach of contract are civil disputes that are absolutely within the authority of the district court to adjudicate them absolutely, not within the authority of the Consumer Dispute Resolution Agency (BPSK). Thus, the BPSK of Batu Bara Regency has acted outside its authority, in other words, the BPSK of Batu Bara Regency is not authorized to examine and adjudicate the case so that the BPSK's decision can no longer be upheld and must be canceled.

Settlement of banking disputes through BPSK in the protection of banking customers in the BPSK Batu Bara Regency decision Number 359/Arbitrase/BPSK/BB/X/2015 dated September 30, 2016 is legally flawed because, unless decided through a district court, settlement through Arbitration between bank customers and banking parties is the authority of the Alternative Dispute Resolution Institution in the Financial Services Sector, as regulated by Law Number 21 of 2011 concerning the Financial Services Authority and the Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 in conjunction with Number 1/POJK.07/2014 concerning Alternative Dispute Resolution in the Financial Services Sector.

According to the Supreme Court, the considerations and decision of the *judex patti*/Kisaran District Court do not conflict with the law and/or statutes, therefore the Supreme Court rejected Erwan Efendi's cassation application. The Supreme Court's decision is appropriate, considering that the Supreme Court's authority is to examine whether the *judex patti* has implemented the applicable legal provisions or not, has misapplied or violated the applicable law, or has failed to fulfill the requirements required by the applicable laws and regulations.

In addition, the Supreme Court in deliberation sessions is obliged to submit written considerations or opinions regarding the case being examined as regulated in the provisions of Article 30 paragraph (2). Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009. In its legal considerations, the Supreme Court continues to base its legal considerations on the objections submitted by the cassation applicant/Erwan Efendi, and based on legal considerations and the decision of the Kisaran District Court.

## **6. CONCLUSION**

### **Conclusion**

1. The legal regulations for consumer protection of banking institutions are regulated in Law Number 21 of 2011 concerning the Financial Services Authority and Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 in conjunction with Number 1/POJK.07/2014 concerning Alternative Dispute Resolution in the Financial Services Sector, while BPSK is more appropriate for consumer disputes within the scope of industry and trade where the technical provisions for consumer disputes in BPSK are regulated by the Ministry of Industry and Trade (Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001).
2. Settlement of banking disputes through BPSK in protecting banking customers is legally flawed because the settlement through arbitration between bank customers and the banking party is the authority of the Alternative Dispute Resolution Institution in the Financial Services Sector, as regulated in Law Number 21 of 2011 concerning the Financial Services Authority and the Financial Services Authority Regulation (POJK) Number 1/POJK.07/2013 in conjunction with Number 1/POJK.07/2014 concerning Alternative Dispute Resolution in the Financial Services Sector.
3. The judge's legal considerations in Supreme Court decision Number 253 K/Pdt.Sus-BPSK/2017 are: The Supreme Court is of the opinion that after carefully examining the cassation memorandum dated December 7, 2016 and the counter cassation memorandum dated December 28, 2016 in connection with the *Judex Facti* considerations, in this case the Kisaran District Court did not apply the law incorrectly because the *a quo* case was indeed a case of default originating from a credit agreement.



## **Suggestion**

1. Consumer protection regulations for banking institutions may not be widely known by the general public who use banking services.
2. BPSK apparatus and regional judicial institution apparatus must be more careful in making decisions regarding the settlement of debt disputes.
3. The Financial Services Authority (OJK) should immediately form a special institution to handle consumer/banking customer disputes with financial institutions, because until 2015 the only Alternative Dispute Resolution Institution (LAPS) that was operating/running effectively was limited to the Indonesian Insurance Mediation and Arbitration Agency (BMAI). Indonesian Capital Market Arbitration Board (BAPMI), and Pension Fund Mediation Board (BMDP)

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