

Banking Mediation As A Way In Settlement Of Disputes Between Banks And Customers

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ABSTRACT

The practice of bank customer transactions cannot be separated from a risk, there are several risks that often occur, namely disputes between the bank and the customer. When the legal relationship between the customer and the bank begins, then since then there is a possibility of opening a dispute between the parties. Settlement of disputes between banks and customers can be done through alternative dispute resolution through mediation. The problem in this writing is how to resolve banking disputes through banking mediation and how are the benefits of banking mediation as an alternative dispute resolution in banking dispute resolution. The type of research used in this study is included in normative legal research which places law as a building system of norms. The data used for this research is secondary data. The collected data were analyzed using qualitative methods. Based on the results of the study, it was concluded that first the implementation of banking dispute resolution through banking mediation institutions was carried out through two stages, namely the first stage, the settlement of customer complaints was carried out at the second internal bank unit, namely through a banking mediation institution facilitated by Bank Indonesia, the second is the benefits of banking mediation as an alternative dispute resolution in resolving banking disputes, one of which is to achieve equality between different parties with conflicts so that a solution can be reached between the parties.

Keywords: *Mediation, Bank, Dispute Resolution*

ABSTRAK

Praktek transaksi nasabah bank tidak dapat dipisahkan dari suatu resiko, terdapat beberapa resiko yang kerap terjadi yaitu sengketa pihak bank dengan nasabah. Ketika hubungan hukum antara nasabah dengan pihak bank mulai terjadi, maka sejak itu kemungkinan terbukanya sengketa antar para pihak. Penyelesaian sengketa antara bank dengan nasabah dapat dilakukan melalui alternatif penyelesaian sengketa melalui cara mediasi. Permasalahan dalam penulisan ini yaitu bagaimana penyelesaian sengketa perbankan melalui mediasi perbankan serta bagaimana manfaat mediasi perbankan sebagai alternatif penyelesaian sengketa dalam penyelesaian sengketa perbankan. Jenis penelitian yang digunakan dalam penelitian ini termasuk ke dalam penelitian hukum normatif yang meletakkan hukum sebagai suatu bangunan system norma. Data yang digunakan untuk penelitian ini yaitu data sekunder. Data-data yang terkumpul dianalisis dengan menggunakan metode kualitatif. Berdasarkan hasil penelitian diperoleh kesimpulan yaitu pertama pelaksanaan penyelesaian sengketa perbankan melalui lembaga mediasi perbankan dilakukan melalui dua tahapan yaitu tahap kesatu penyelesaian pengaduan nasabah dilakukan di unit internal bank kedua yaitu melalui lembaga mediasi perbankan yang difasilitasi oleh Bank Indonesia, kedua manfaat mediasi perbankan sebagai alternatif penyelesaian sengketa dalam menyelesaikan Sengketa perbankan yaitu salah satunya untuk mencapai kesetaraan antara pihak yang berbeda dengan konflik sehingga dapat mencapai solusi antara para pihak.

Kata Kunci: Mediasi, Bank, Penyelesaian Sengketa

A. INTRODUCTION

Banking is everything that is related to banks, including institutions, business activities, and processes in carrying out their business activities. (Kasmir, 2008: 25) "National development aims to create a just, prosperous society based on Pancasila and the 1945 Constitution on an ongoing basis while still paying attention to aspects of harmony, balance, harmony of various elements, especially in the economic and financial fields." (Dirdjosisworo, 2003:7) Financial institutions which are the core of the Indonesian State financial system are banking institutions. (Hermansyah, 2009:189) "Banks have an important role in people's lives because apart from being financial institutions which are government business entities, the private sector is also a means for the community to carry out various financial transactions." (Tobing, 2015:84)

Banking has a "financial intermediary function, namely that banks carry out their business activities by collecting funds from the public and then channeling them efficiently and effectively to the real sectors to enhance development and uphold the stability of the country's economy. Bank business activities in collecting public funds are based on the principle of trust obtained from the community. When people have trust in banks, people will feel safe when saving their funds in banks. Banks then have to bear enormous reputational risks and banks must continue to maintain the trust of the public who have deposited their funds in the bank and channeled these funds to drive the country's economy" (Doly, 2012: 94). Complaints of consumer dissatisfaction can be made internally by contacting the bank, but there are also those who make complaints by taking legal channels in the form of lawsuits or demands through the courts. (Siahaan, 2018)

The settlement of disputes between consumers or customers and banks can be carried out through negotiation, reconciliation, mediation or arbitration settlement procedures regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as through litigation (judicial). "Efforts to resolve disputes through arbitration or judicial channels are not easy for consumers or customers because it takes a long time and costs are not

cheap. Consumers or customers require simple, inexpensive, effective and efficient settlement efforts. (Zaini, 2012:9)

In business, banking is very closely related to trust, if the public believes in a bank, they will feel safe being customers of the bank concerned, and conversely, public distrust will greatly affect the continuity of a bank's business. (Herliana, 2010: 141) Bank Indonesia Regulation Number 8/5/PBI/2006 as amended by Bank Indonesia Regulation Number 10/1/PBI/2008 concerning Banking Mediation has explained that disputes in the banking sector can be resolved through a banking mediation process. It is stated in CHAPTER II concerning the Implementation of Banking Mediation, Article 2 explains that: "

"Disputes between customers and banks that are caused by non-fulfillment of customer financial demands by the bank in resolving customer complaints can be resolved through banking mediation."

The disputes, in the civil field can be resolved by means of peace can then become the object of a dispute which is resolved through a mediation process unless otherwise stipulated by law. (Anwar, 2014:37) Dispute resolution that takes a long time can increase reputation risk for banks and cause losses to customers" (Harrieti, 2015:48) "In the banking world itself there is Bank Indonesia Regulation (PBI) No.8/5 /PBI/2006 which was later amended by PBI No.10/1/PBI/2008 concerning Banking Mediation. This PBI provides an alternative in resolving disputes between customers and banks through a mediation process at what is called the Banking Mediation Institution (LMP)."

B. FOCUS OF PROBLEM

The formulation of the problem raised in this research is first, how is the settlement of banking disputes through banking mediation? The second, what are the benefits of banking mediation as an alternative dispute resolution in banking dispute resolution?

C. RESEARCH METHODOLOGY

The type of research used in this study is included in normative legal research which places law as a building system of norms. The data used in this research is secondary data. All collected data were analyzed using qualitative methods.

D. FINDING AND DISCUSSION

1. Settlement of Banking Disputes Through Banking Mediation

Disputes or disagreements in various business activities are actually things that are not expected to occur because they can result in losses for the parties to the dispute, both those who are in the right position or in the wrong position. Therefore, the occurrence of business disputes needs to be avoided in order to maintain a good reputation and relationship in the future. Nevertheless, disputes are sometimes unavoidable due to misunderstandings, violations of laws and regulations, broken promises, conflicts of interest, and losses to one party. (Sanusi Bintang, 2000:113)

Mediation of banking is an alternative dispute resolution that is very necessary, because disputes often occur between customers and banks which lead to disputes between customers and banks. This can be seen from the high demand from customers for a mechanism for handling and resolving complaints which is reflected in the high number of complaints received by banks. The presence of banking mediation is necessary because banking mediation is expected to resolve civil disputes between customers and banks. The existence of banking mediation not only benefits the customer but also benefits the bank, this can be seen when a dispute occurs between the customer and the bank, the customer who submits a dispute resolution that is not satisfied must be resolved immediately by the bank. bank, because in filing a dispute that is carried out by the customer not only for the benefit of the customer but also for the benefit of the bank.

Banking Mediation Institutions are carried out by independent banking Mediation institutions formed by banking associations and in carrying out their duties in coordination with Bank Indonesia. One of the main elements in this mediation institution is the existence of one or more mediators. One of the goals

is to help find a way out (alternative) for resolving disputes that arise between the parties that are agreed upon and acceptable to the parties to the dispute. The settlement of disputes in the banking sector between customers and banks is one of the things that is the focus of banking management in Indonesia, namely by including it in the 6 (six) pillars of the Indonesian Banking Architect, namely:

- a. Sound banking structure
- b. Effective control system
- c. Independent and effective monitoring system
- d. Strong banking industry
- e. Adequate supporting infrastructure
- f. Consumer protection.

Banking mediation is a dispute settlement between a customer and a bank assisted by a mediator. "The method is by summoning, bringing together to motivate banks and customers so that they reach decisions without providing recommendations or decisions. The settlement is a win-win solution meaning that neither party wins or loses. All forms of communication, negotiations and statements made in the mediation process are treated as closed or confidential information. Mediation is an effective method or means for resolving disputes in the banking sector between customers and banks, because the interests of customers and the bank's reputation can be safeguarded and likewise the interests and rights of customers as consumers who use banking services can be protected. (Usman, 2011:197-198)

Up to now, banking disputes have generally been resolved through court proceedings (litigation). "In the context of settlements like this, customers are generally faced with a number of difficult problems, including:

- a. The costs required are relatively large, while it is not uncommon for the value in dispute to be relatively not too large;
- b. The time required is relatively long and the process is long and convoluted, sometimes even for a claim of small value;
- c. The examination process which is open to the public affects the credibility of customers;

- d. Customers are generally placed in a subordinate position to the bank, so there is always a feeling of distrust of the judicial process. This condition is exacerbated by the unfavorable image of the judiciary in society;
- e. The nature of a win-lose decision is not conducive to the continuation of the relationship between the disputing parties.” (Nugroho, 2009:213)

The use of mediation in resolving business disputes is a strategy that has many advantages, namely low cost, fast resolution, satisfying results for the parties, profitable agreements, agreements that can fulfill the wishes of the parties and can be adapted to the conditions of each party. The parties in learning by practicing with creative dispute resolution methods. With a higher level of control, outcomes are significant and predictable, and empower individuals. Maintaining a long-term relationship or ending it with a more friendly and mutually beneficial settlement, rather than simply accepting the outcome of a win or lose decision. (Hanifah, 2016:8)

Mediation is carried out by the disputing parties with the help of a mediator with the aim of achieving mutually beneficial results for the parties, does not require large costs, but is useful and fully acceptable at the will of the parties themselves. The parties appoint the mediator as a neutral party so that they can help find a way out of the dispute and try to convince the parties to discuss the settlement. (Karmuji, 2016:38)

2. Advantage of Banking Mediation as an Alternative to Dispute Resolution in Banking Dispute Resolution

The Complaints or “disputes between banks and customers can occur because they are a consequence of the service business. To handle this, it is necessary to establish a banking mediation institution. The existence of a banking mediation institution is a form of consumer protection. This is one of the policy steps implemented by Bank Indonesia (BI) as stipulated in the Indonesian Banking Architecture (API). The existence of these institutions is a general variation as found in other countries because they want to increase consumers, namely customer banking. The role of mediation in banking disputes between customers and banks is to achieve justice between conflicting parties and be able to resolve them internally. In this case both parties have proper freedom to resolve the

conflict and form a self-control attitude and rely on directed diplomacy so that the two parties can continue their relationship in the future. With deliberation it is hoped that it will be reached to accept a joint settlement by putting aside personal interests to achieve a win-win solution.

Mediation is needed to avoid prolonged problems, especially if both parties believe that they are right. By submitting dispute issues to the mediator does not mean giving up on existing problems, but rather showing maturity to provide the best solution for both parties. The presence of a banking mediation institution is not to prevent customers or banks from being sued, but rather to clarify the complaint mechanism so that the mechanism can be regulated. The presence of this banking mediation institution is not only to protect the interests of bank customers, but also for the interests of the bank.

The advantages obtained by the bank with this mediation institution are as follows:

- a. “Banks can make customers feel more comfortable because any problems a customer feels can be answered clearly by the bank. If customers feel more at home, it is hoped that this will show customer loyalty which will be tested more.
- b. The existence of complaints can be valuable information for bank management. Thus, if the bank's management knows that there are a lot of complaints in certain areas, for example, they can be corrected immediately.
- c. Related to customer loyalty, with customer complaints, it will be a warning for the bank. This means that the management of the bank concerned knows which aspects are the most complained about by customers. Thus, these aspects can be directly repaired weak side.
- d. In addition, the market research department at the bank knows where the weaknesses are. This makes efficiency because market research does not need to hire outsiders.
- e. The reputation of the bank concerned is getting better because the bank's services have also improved.
- f. Can minimize or can immediately find out if there is negative publicity.

Instead of customer dissatisfaction with a bank written in mass media readers' letters, it is better to deal with it directly. Because if they complain in the mass media, at least the bank's reputation will be bad. The process of resolving disputes through banking mediation is cheap, fast and simple because:

- 1) Free of charge;
- 2) The maximum period for the mediation process is 60 (sixty) working days;
- 3) The mediation process is carried out formally/flexibly.”

The implementation of banking mediation is very necessary to resolve disputes between customers and customers. If a media is not carried out, it is likely to have the potential to harm customers and affect the bank's reputation. Banking mediation is a simple, inexpensive, and fast way to resolve problems that occur between customers and banks. The result of the mediation of the parties is an agreement between the customer and the bank which is seen as an effective form of problem solving because the customer's interests and the bank's reputation can be maintained.

Through the mediation process it is hoped that good communication can be achieved between the disputing parties. Making the disputing parties able to hear, understand the reasons/explanations/arguments that form the basis/consideration of the other party. With face-to-face meetings, it is hoped that it can reduce feelings of anger/hostility between one party and another. Understanding the strengths/weaknesses/strengths of each, and this is expected to bring the perspectives of the disputing parties closer to a compromise acceptable to the parties.

E. CONCLUSION

Based on the descriptions that have been submitted, the conclusions in this writing are as follows:

1. The implementation of "bank dispute resolution through banking mediation institutions is carried out in two stages, namely the first stage of settlement of customer complaints is carried out at the Bank's Internal Unit. If the customer

is not satisfied, he can use the second stage, namely through a banking mediation institution facilitated by Bank Indonesia.

2. One of the benefits of banking mediation as an alternative dispute resolution in resolving banking disputes is to achieve equality between parties in conflict so as to achieve a win-win solution. For the bank, dispute resolution through banking mediation has a positive impact, especially in increasing public trust in banks. Through banking mediation, dispute resolution between customers and banks can be resolved simply, cheaply and quickly."

F. RECOMMENDATIONS

The suggestions that the author wants to convey in this writing are as follows:

1. In order for banking mediation to improve performance and function in society, Bank Indonesia as the highest authority in determining banking policy in Indonesia must maximize its socialization of the existence of banking mediation to the public by reaffirming bank obligations, informing its customers of the availability of banking mediation.
2. Bank Indonesia and the banking sector must build and create awareness among all stakeholders that the implementation of mediation is a must, among others through consistent and integrated education and socialization of banking mediation to the public.

References/Bibliography :

- Hermansyah, Indonesian National Banking Law, Fifth Printing, Kencana, Jakarta, 2009
- Kasmir, Banks and Other Financial Institutions, Raja Grafindo, Jakarta, 2008
- Rachmadi Usman, Settlement of Customer Complaints and Banking Mediation, Bandar Maju, Bandung, 2011
- Rudyanti Dorotea Tobing, Aspects of Business Law: Definition, Principles, Theory and Practice, Ed. Akhmad Dakhoir, First Printing, Laksbang Justisia Surabaya, Surabaya, 2015
- Sanusi Bintang, Dahlan, Fundamentals of Economic and Business Law, Citra Aditya Bakti, Bandung, 2000
- Soedjono Dirdjosisworo, Corporate Law regarding Banking Law in Indonesia (Commercial Banks), First Print, Penerbit Mandar Maju, Bandung, 2003
- Susanti Adi Nugroho, Mediation as an Alternative Dispute Resolution, First Edition, First Printing, PT. Telaga Ilmu Indonesia, Jakarta, 2009

JOURNALS

- Denico Doly, Banking Mediation Institution in Dispute Resolution, Journal of Hukum dan Dinamika Masyarakat, Vol.10 No.1 October 2012
- Herliana, The Role of Bank Indonesia as Mediation Executor in Banking Dispute Resolution, Law Platform, Journal of Law, Faculty of Law, Gadjah Mada University Vol. 22, 2010
- Karmuji, Role and Function of Mediator in Settlement of Civil Cases, Journal of Ummul Qura, Vol. VII, No. March 1, 2016
- Mardalena Hanifah, Empirical Studies: Mediation as an Alternative Dispute Resolution, Adhaper, Vol 2, No.1, January-June 2016
- Nun Harrieti, "Customer Dispute Settlement Mechanisms after the enactment of POJK Number 1/POJK.07/2013 and POJK Number 1/POJK.07/2014", Adhaper Journal of Hukum Acara Perdata, Vol. 1, No. 1, January-June 2015
- Rudy Haposan Siahaan, Settlement of Banking Disputes through Mediation After the issuance of Law Number 21 of 2011 concerning the Financial Services Authority, Doktrina: Journal of Law, Volume 1 (1) April 2018

Widya Kurniati Anwar, "Banking Dispute Resolution Through Mediation in Indonesia", *Journal of Lex Privatum*, Vol.II/No. April 2, 2014

Zulfi Diane Zaini, Banking Mediation Institute as an Alternative Banking Dispute Resolution in Indonesia, *Journal of Kedailan Progresif*, Volume 3 Number 1 March 2012, University of Bandar Lampung

LAWS AND REGULATIONS

1945 Constitution

Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking

Regulation of Bank Indonesia No. 8/5/PBI/2006 concerning Banking Mediation

Law Number 8 of 1999 concerning Consumer Protection Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution”