



## Integrated Alternative Dispute Resolution Institutions in the Financial Services Sector: Dispute Resolution Efforts in Consumer Protection Framework

Lastuti Abubakar<sup>1</sup>; Tri Handayani<sup>2</sup>

<sup>1,2</sup>Faculty of Law, Universitas Padjadjaran

Corresponding author's email: [lastuti.abubakar@unpad.ac.id](mailto:lastuti.abubakar@unpad.ac.id);

### Article Information

Submitted : 19 February 2021

Reviewed : 09 March 2021

Accepted : 20 April 2021

#### Keywords :

*integrated alternative dispute resolution; financial services sector; consumer protection*

DoI: 10.20961/yustisia.v10i1.48684

### Abstract

*This study examines and analyzes the legal implications of strengthening the integrated Alternative Dispute Resolution Institutions in the Financial Services Sector regulations. This study applies a normative juridical approach with descriptive-analytical research specifications. The data are analyzed using qualitative juridical analysis. Results show that: an Integrated Alternative Dispute Resolution Institutions in the Financial Services Sector is a dispute resolution institution that is in accordance with the characteristics of the financial services sector as an agent of trust and prioritizes consumer protection. It is expected that consumer dispute resolution is faster, cheaper, and fairer for both Business Actors and the consumers; strengthening of regulations on integrated ADR Institutions in the Financial Services Sector aims to create independent, fair, effective, and efficient dispute resolution capable of anticipating developments in the financial services sector that are increasingly complex from a legal perspective, the use of financial technology, and products/services across financial services sectors;*

### I. Introduction

The Indonesian financial services sector is growing rapidly in terms of regulation, institutions, and products/services. In terms of regulation, the financial services sector is not only heavily or strictly regulated but also adopts and adapts to developments in global regulations, hence requiring constant renewal of regulations. In addition, currently, Indonesia uses a dualistic legal system, meaning more than one legal system, namely the conventional and Sharia legal systems ([Abubakar, 2013](#)).

The Sharia principle-based financial services sector has shown significant developments with the government's political will that make Islamic economy the mainstream in the development of Indonesia's financial services sector. The Islamic financial industry will not only compete with domestic conventional financial industry but also with the conventional and Islamic financial institutions in ASEAN and beyond ([Komite Nasional Keuangan Syariah, 2018](#)). These two legal systems operate side by side with regulations that are different in substance and in principle. In addition to changes in the legal system, the financial services sector has experienced a wider development of forms and types. Based on Article 1 Number 4 of Law Number 21 of 2011 on the Financial Services Authority/OJK, financial service institutions are institutions that carry out activities in the banking sector, capital markets, insurance, pension funds, financing institutions, and other financial service institutions. Financing institutions are business entities performing financing activities in the form of provision of funds or capital goods in detail are regulated in Government Regulation Number 9 of 2009 on Financing Institutions. With regard to the Government Regulation, a financing institution can be in the form of a Financing Company, namely a business entity specifically established to conduct business leases, factoring, consumer financing and/or credit card businesses, including venture capital companies and infrastructure financing companies. Meanwhile, other financial service institutions include pawnshop, underwriting institution, Indonesian Export Financing Institution, secondary mortgage company, and Social Security Administrating Board as provided under laws and regulations. It is conceivable that the scope of the financial services sector must be regulated and supervised by the Financial Services Authority, or herein after referred to as "OJK".

Development in the financial services sector affects the types of disputes in financial products and services. In terms of form, the rapid development of financial technology requires strong regulatory anticipation to avoid misuse that incurs losses to consumers. The electronic-based financial transaction creates new sources and types of disputes, namely related to the misuse of personal data that harms consumers ([Rinaldi & Fahamsyah, 2020](#)). The development of the financial services sector has an impact on the types and forms of disputes that are increasingly complex, thus requiring proper dispute resolution. In addition, consumer dispute resolution in the financial service sector must continue to prioritize consumer protection as mandated in the OJK Law and maintain public trust in financial service actors. Therefore, it is necessary to resolve disputes that are in line with principles of accessible, effective and efficient (saving time and cost), protecting both parties, as well as producing fair and honest decisions. ([Rahmawati & Mantili, 2016](#))

Prior to the enactment of Regulation of OJK, or hereinafter referred to as "POJK" Number 61/POJK.07/2020 on Alternative Dispute Resolution Institutions in the Financial Services Sector (POJK Alternative Dispute Resolution Institution in FSS), each financial service sector (FSS) can establish its own Alternative Dispute Resolution Institution in FSS. There are 6 (six) Alternative Dispute Resolution Institution in FSS that provide dispute resolution services for certain sectors, namely: the Indonesian Insurance Mediation and Arbitration Agency (BMAI); Indonesian Capital Market Arbitration Agency (BAPMI), Pension Fund Mediation Agency (BMDP); Indonesian

Banking Alternative Dispute Resolution Institute (LAPSPI); Arbitration and Mediation Agency for Indonesian Underwriting Companies (BAMPPPI); and the Indonesian Mediation for Financing, Pawnshop, and Venture Agency (BMPPVI) ([Otoritas Jasa Keuangan, 2016](#)). This condition causes unreliability of service and quality provided by each Dispute Resolution Institution in FSS in resolving disputes. In addition, there is uncertainty in dispute resolution for consumers using cross-sectoral products and/or services for financial services or for the financial industry that does not yet have a dispute resolution institution. Meanwhile, the financial services sector demands dispute resolution in accordance with the FSS characteristics, namely easily accessible and time-friendly to consumers because this sector is closely related to aspect of businesses that prioritize time (effective) and are affordable (efficient). The financial services sector requires a dispute resolution institution that can handle all disputes, both conventional and Sharia. To address the aforementioned reasons, it is necessary to establish a single Dispute Resolution Institution capable of handling all disputes over both conventional and Sharia financial services effectively and efficiently.

Dispute resolution in FSS is one of the strategic issues that has received full attention from OJK. This is inseparable from the purpose of OJK. Based on Article 4 of the OJK Law, the renewal of the Alternative Dispute Resolution Institutions in FSS regulation is closely related to OJK establishment, namely that all activities in FSS are: a. organized in an orderly, fair, transparent, and accountable manner; b. able to realize a financial system that grows in a sustainable and stable manner; and c. able to protect the interests of consumers and society. Dispute resolution has a direct relationship with aspects of legal protection for consumers in FSS and guarantees of legal certainty for consumers. The asymmetry or power unbalanced of consumers is one of the strong reasons that dispute resolution in FSS must be able to help consumers to reach an agreement. Therefore, alternative dispute resolution is an option to avoid stressful, expensive, and sometimes lengthy procedures in the General Court ([Kawiński, 2014](#)). Consumer dispute resolution in FSS has specific characteristics. There are several reasons leading FSS dispute resolution incline to choose alternative dispute resolution outside the court. **First**, the financial services industry—as an agent of development through an intermediary function, especially in the banking sector and the capital market—correlates with economic growth that demands regulations that are adaptive to domestic, regional, and global economic changes. Many theories agree that dispute resolution will affect transaction costs and promote economic growth by eliminating the imbalance of information between consumers and financial service providers ([Kriese, Abor, & Agbloyor, 2019](#)). The **second** reason is the direction of global financial services sector regulation development that demands and prioritizes regulations aimed at protecting investors, including consumers of FSS. The International Organization of Securities Commission (IOSCO) in its Objectives and Principles of Securities Regulation, for example, regulates 38 basic principles for developing regulations in the capital market.

There are three objectives of the 38 principles, namely: investor protection; ensuring that the market is fair, efficient, and transparent; and reduction of systemic risk. It is interesting that in IOSCO principle, the term “investor” is included as clients or other consumers of financial services (International Organization of Securities Commissions, 2017). Based on the principle of “consumer protection”, it is common that regulations

in the capital market emphasize more on preventive action to guarantee consumer/investor rights. In the capital market, legal certainty and protection are implemented since the transaction mechanism is initiated at the Stock Exchange by placing Clearing and Underwriting Institutions to deal with the occurrence of default ([Abubakar & Handayani, 2019](#)). Apart from being an agent of development, the financial industry is an agent of trust, namely, an industry based on consumers' trust. This is manifested by facilitating consumers in defending their rights while maintaining the sustainability of the financial industry business. Therefore, FSS business actors must have internal complaint handling and dispute resolution that are managed professionally.

Based on the aforementioned reasons, an effective and efficient dispute resolution is one of the elements in achieving the goal. Alternative out-of-court dispute resolution is a direction for reforming dispute resolution regulations in the FSS. In practice, courts are still preferred by business actors to resolve civil disputes, particularly banks ([Septyanun, 2020](#)). There are several reasons that banks prefer court settlements. First, banks are required to maintain all assets, including credit or financing that has been distributed. Referring to the prudential banking principle, the bank prefers the court if they deemed that they are most likely to win the case. On the other hand, the consumers who are losing do not always have bad faith. Here, the concept of consumer protection is somewhat neglected. This is not in line with the objectives of FSS regulations that prioritize consumer protection (with good intentions).

The issuance of POJK Number 61/POJK.07/2020 on Alternative Dispute Resolution Institutions for Financial Services Sector (POJK Dispute Resolution FSS) that revokes POJK Number 1/POJK.07/2014 is one of the effort to anticipate the increasingly complex development of FSS. There are several considerations for the urgency of reforming the Regulation, namely: 1) the rapid growth of the Islamic FSS; 2) the use of FSS technology with the emergence of financial technology such as peer-to-peer lending, equity crowdfunding, and digital banking; 3) the increasingly complex and cross-sectoral financial products and services in financial services make it difficult to determine the right institution to resolve disputes. Therefore, to improve the effectiveness and efficiency as well as the uncertainty of dispute resolution in the FSS, it is necessary to establish a single alternative dispute resolution institution to handle all disputes in the FSS, both conventional and Sharia. The renewal of POJK is also aimed at realizing a credible alternative dispute resolution institution of FSS, hence, requiring strengthening of regulations on several aspects, including the alternative dispute resolution institution. The new POJK regulates the approval, membership and general meeting of members, management, articles of association, list of mediators and arbitrators as well as workplans and annual budgets. In addition to provision on institutions, monitoring and reporting are regulated in more detail. The previous POJK did not optimally regulate monitoring. Based on OJK Circular Letter Number 54/SEOJK.07/2016 on Monitoring of Alternative Dispute Resolution Institution in FSS, OJK monitors the institution by 1. evaluating the reports and 2. assessing the application of the principles of dispute resolution. Report of Alternative Dispute Resolution Institution must be submitted every 6 months. The substance includes institutional and dispute resolution in the format determined by OJK. With the enactment of the new POJK on Dispute Resolution Institution in FSS, all Financial Service Business Actors who were originally registered members as

alternative dispute resolution institution under the old POJK, starting 1 January 2021, will automatically become members of the new alternative dispute resolution institution in FSS. Thus, in accordance with the mandate of Article 6 POJK on Alternative Dispute Resolution Institution in FSS, there is only one alternative dispute resolution institution in FSS as an alternative to dispute resolution in FSS. This change is expected to have a positive impact on consumer protection in FSS. The existence of the integrated alternative dispute resolution institution in FSS ends consumer uncertainty in resolving disputes with business actors. However, business actors and consumers still need support to make the alternative dispute resolution institution in FSS as an alternative to out of court disputes.

## II. Research Methods

This study applies normative juridical research, namely research that uses secondary data, both primary legal materials in the form of laws and regulations related to the problem under study; secondary legal materials, such as books, articles, journals, research results, and papers relevant to the problem; as well as tertiary legal materials, i.e, legal dictionaries and tertiary legal materials that provide explanations for primary and secondary legal materials. Furthermore, the collected data were analyzed juridically and qualitatively. The research specification is descriptive-analytical, namely the results of data processing and analysis are described in the form of a description as complete and detailed as possible.

## III. Result and Discussion

### A. The Urgency of Consumer Dispute Resolution in FSS

Following main headings should be provided in the manuscript while preparing. Compared to other service industries, the Financial Services Industry has specific characteristics. In addition to highly strict regulations and supervised by OJK, the financial services industry is a field of economic law that is not only interdisciplinary but also transnational in nature. As part of economic law, regulation in FSS involves other areas of law such as state administrative law, criminal law, and international civil law. Besides included in the field of law, FSS involves other scientific fields such as economics and mathematics, thus creating a term called 'financial mathematics' that study rate of interest, credit, investment, and development of financial transactions (Abad-Segura & González-Zamar, 2020)

There are at least 3 factors in the financial services industry that will affect the dispute resolution system in FSS, namely: changes in the global economic regime, technological developments, and consumer protection. The financial services industry is constantly developing in line with global trends and needs. Changes in the economic regime have also influenced policies in FSS, especially during an economic crisis ([Santilln-Salgado, 2015](#)). All countries have made regulatory and policy changes, especially during the current pandemic. The Indonesian government issued a Government Regulation in Lieu of Law



(PERPU) Number 1 of 2020 which was later stipulated as Law Number 2 of 2020 and other related regulations to anticipate the economic crisis. This was followed by the issuance of policies in FSS to carry out economic recovery and economic stimulus to anticipate the impact of COVID-19.

The latest development in FSS is the influence of technology with the arrival of Financial Technology (Fintech) that focuses on certain innovative technologies and processes from payments to insurance ([PWC, 2019](#)). Financial technology will create a new business model that, if not properly regulated, can cause disruption to other FSSs, including consumers. Based on data published by the OJK, as of September 2020, there are 126 platforms of Peer-to-Peer lending Fintech ([Otoritas Jasa Keuangan, 2021b](#)). There is a possibility of high-risk illegal Fintech because there is no regulator that supervises Fintech activities; regulator that can charge Fintech with large and not transparent interest and fines; does not comply with OJK Regulations and other applicable laws; Fintech with management does not meet the standard of experience that must be fulfilled; Fintech with unethical billing/collection methods; Fintech that does not have an association or cannot be a member of the AFPI; Fintech with no or uncertain office location or operated from abroad to avoid Indonesian law enforcement; Fintech that conducts activities without permission from related authority; Fintech which applications will be blocked by the Investment Alert Task Force, Fintech with unreasonably easy lending and borrowing requirements; and the most importantly, Fintech that does not respond to customer complaints accordingly. In addition, illegal Fintech often asks for all access to personal data on the consumers' phones to be abused at the time of billing collection. Illegal fintech poses a risk to lenders, especially the risk of loss/misuse of funds, unsuitable refunds and/or potential for shadow banking and Ponzi scheme practices ([Otoritas Jasa Keuangan, 2021a](#)). The third reason that it is urgent for the urgency to reform dispute resolution regulations in FSS is consumer protection. Without consumers, FSS will neither grow nor develop. Consumer behavior in using financial industry services even determines the development of services/products that the financial industry will offer ([Aldlaigan & Buttle, 2001](#)). In contrast, product and service innovations will expand the financial services menu available to consumers ([Lumpkin, 2010](#)).

Based on Article 1.2 of POJK Number 1/POJK.07/2013 on Consumer Protection in the Financial Service Sector (POJK Consumer Protection in FSS), consumers are parties who place their funds and/or utilize the services available in financial service institutions, including customers in banks, investors in the Capital Market, insurance policyholders, and pension fund participants based on the laws and regulations in FSS, or investors that play an important role in FSS. Consumer protection in FSS aims to create a reliable consumer protection system, increase consumer empowerment, and raise the business actors' awareness on the importance of consumer protection so as to increase public confidence in FSS. The expected tangible results including: business actors paying attention to the fairness aspect in determining the cost or price of products and/or services, minimum fee-based pricing that is not

detrimental to consumers, and the suitability of products/services offered to the needs and abilities of the consumers. Market conduct is applied in a balanced manner between developing FSS as well as fulfilling consumer rights and obligations to increase consumer confidence. Market conduct is the behavior of business actors in designing, compiling, and delivering information; offering and making agreements on products/or services; as well as dispute resolution and complaint handling. Thus, the availability of effective and efficient dispute resolution is one of the consumer protection measures aimed at increasing investor and consumer confidence in every FSS activity (market confidence) and providing opportunities for business actors' development in a fair, efficient, and transparent manner. On the other hand, consumers have an understanding of their rights and obligations in dealing with business actors with regards to the characteristics of the products and services (leveled playing field). In the long term, the financial industry will get positive benefits to spur efficiency in response to and demands for better service of financial services.

#### **B. The Obligation of Business Actors to Provide Consumers Complaints Service**

Disputes between consumers and business actors are unavoidable in line with the increasingly dynamic interactions between consumers and business actors, especially with the development of technology that makes it easier for consumers to access business actors' services. In addition, the products and services continue to develop and sometimes are not well understood by the consumers. This has the potential to cause disputes. Disputes between consumers and business actors can also arise from their negligence in carrying out obligations in agreements related to the products and services. If not handled and resolved, consumer complaints submitted to the business actors will have the potential to cause harm to consumers and reduce the level of consumer confidence in the business actors. On the business actors' side, consumer confidence is the main pillar that supports the development of FSS. Hence, efforts to maintain consumer confidence are imperative ([Otoritas Jasa Keuangan, 2018](#)).

One way to create activities that protect consumers' interests is to require business actors to have consumer complaint services. Consumer complaint service is a forum to accommodate consumer complaints, including the potential for material loss to the products and/or services utilized by consumers. The consumer complaint can be submitted either verbally or in writing. This consumer complaint and resolution service include receiving complaints from a consumer at the time and after a dispute occurs, namely a difference of opinion between the consumer and the business actors with regards to the implementation of the rights and obligations of the parties. The obligation of business actors to have Consumer Complaint services is stated in Article 32 POJK Number 1/POJK.07/2013 on Consumer Protection (POJK Consumer Protection in FSS) and OJK Circular Letter Number 2/SEOJK.07/2014 on Services and Resolution of Consumer Complaints to Financial Service Business Actors. This consumer service and complaint resolution mechanism must be informed to the consumers. For this reason, business actors are prohibited from charging any

fees to consumers for filing complaints. Furthermore, this consumer complaint service is regulated in POJK Number 18/POJK.07/2018 on Consumer Complaint Services in Financial Service Sector as a form of consumer protection regulation strengthening. This is important to specifically regulate the stages and periods of consumer complaint services that have not been regulated in the POJK on Consumer Protection and OJK Circular Letter Number 2/2014. Furthermore, OJK issued Circular Letter Number 17/SE OJK/2018 on Guidelines for the Implementation of Consumer Complaint Services in FSS that revoked the OJK Circular Letter Number 2/2014. The consumer complaint service is expected to be able to resolved disputes in a timely manner. Through the POJK and Circular Letter on Consumer Complaint Services, business actors are obliged to handle all consumer complaints through proper procedures and report the Consumer Complaint Service to OJK.

In addition, the strengthening of consumer complaints regulations adds provisions for business actors that are under OJK supervision in line with the development of the financial services industry and the service period for complaints involving other parties. POJK 18/2018 revokes Articles 34 to 38 of POJK on Consumer Protection and regulates in detail the obligations of business actors in handling consumer complaints. Based on POJK 18/2018, Consumer Complaint Service is the first legal step that must be taken by the consumers if there is consumer dissatisfaction due to loss or potential material loss to the consumer. Article 22 of POJK 18/2018 regulates that business actors are obliged to resolve and respond to consumer complaints that can be in the form of: a) explanation of the problem, in the event that there is no error by business actors that cause loss and/or potential loss to consumers; or b) settlement offer, in the event that there is an error by business actors that causes loss and/or potential loss to the consumer. It can be in the form of submitting a formal apology, offering redress/remedy, and/or repairing products/services. The offer of compensation is made on the condition that the consumer has fulfilled their obligations and the compensation is given by considering the loss and/or potential of material loss fairly and directly to the consumer.

Article 16 of POJK 18/2018 regulates that the period for complaints settlement is no longer than 20 working days from the time the documents related to the complaint are received in full. In certain conditions, business actors may extend the complaint settlement by 20 days from the end of the settlement period and are obliged to notify the extension to the consumers before the period ends. The aforementioned conditions include: a) the business actor office that receives complaints is not the same as the office where the problem is reported and there are communication problems between the two offices; b) complaints submitted by consumers and/or consumer representatives require special examination of the business actors documents; and/or there are other matters that are beyond the control of the business actors.

In the event the consumer objects to the complaint response, the business actor is obliged to handle the objection submitted if the consumer or the



consumer representative submits a new document that may result in a change in the complaint response. In the event that the consumer rejects the complaint response from the business actors, business actors are obliged to provide information to the consumers and/or consumer representatives with regards to dispute resolution efforts that can be carried out through the court or outside the court. The dispute resolution outside the court is carried out through Alternative Dispute Resolution Institutions in FSS stipulated by OJK. POJK 18/2018 requires that the clause for dispute resolution selection through the court or outside the court is included in the agreement and/or Financial Transaction document between the business actor and consumer. Thus, consumers can make further efforts to resolve disputes outside the consumer complaint services provided by business actors.

### **C. Integrated Alternative Dispute Resolution Institutions: Consumer Protection Efforts in Financial Service Sector**

In practice, the resolution of consumer complaints in FSS by business actors does not always result in a mutual agreement. This has resulted in disputes between consumers and business actors that still require resolution through both litigation and non-litigation channels. In order to provide optimal consumer protection, the Financial Services Authority issued POJK on Integrated Alternative Dispute Resolution Institutions in FSS as an out-of-court/non-litigation dispute resolution mechanism. The enactment of the POJK further strengthens the position of the alternative dispute resolution institutions as the main choice in handling consumer disputes and shows the direction of the consumer dispute resolution policy in FSS. Although regulations open up opportunities for dispute resolution in court, alternative dispute resolution institution is considered more fulfilling the FSS character that emphasizes efficiency and effectivity.

Based on research results, civil disputes in the capital market, for example, hardly end up in court. One of the cases that have attracted public attention in the capital market that has been to court is a civil lawsuit filed by Benny Condro against several parties including Goldman Sachs International, Citibank N.A, and PT Ficomindo Buana Registrar, that was corroborated by the Jakarta High Court's decision on 23 July 2018 ([Rahmawati & Abubakar, 2019](#)). The remaining civil losses are considered more investment losses that have been managed by investors. In addition, the choice of FSS dispute resolution is strongly influenced by the characteristics of FSS. Through alternative dispute resolution institutions, the settlement process is confidential and prioritizes win-win solutions, thus, it is more comfortable for the parties and able to maintain consumer confidence in FSS. In addition, through alternative dispute resolution institutions, dispute resolution is expected to be faster, cheaper, and produce objective, relevant and fair decisions or agreements.

FSS, particularly the capital market, is not only a source of corporate financing but also an alternative investment for lenders. Therefore, low costs and business momentum are critical for consumers. In addition, the increasingly

complex developments in technology and financial products/services require special expertise in handling disputes. The disputes tend to be resolved through a non-litigation mechanism. Alternative dispute resolution institutions in FSS provide dispute resolution services that are easy to access, economical, fast, and carried out by competent human resources who understand the financial services industry. In Malaysia, financial disputes are often resolved through arbitration and mediation. Arbitration is a method of dispute resolution that involves disputing parties to present their cases before a court that is independent, impartial, and experts who have knowledge of the law ([Dahlan, 2018](#)). From the business actors' perspective, alternative dispute resolution institutions that prioritizes privacy will be more beneficial to business actors preferring that the consumer disputes not be publicized. The publication can reduce consumer confidence in financial institutions ([Budnitz, 1994](#)). Advice Services Alliance (ASA)-UK, a paying organization for independent advisory services in the UK, publishes the ASA Guide that explains the pros and cons of Alternative Dispute Resolution (ADR). In general, there is a view that resolving disputes through alternative dispute resolution is cheaper, faster, and more friendly; the process is flexible because it can be conducted either through correspondence, face to face, or through electronic media, and results in satisfactory solutions to both sides. However, there are several risks or weaknesses to the use of alternative dispute resolution, namely: imbalances of power between the parties making the mediation process somewhat unfair; it is difficult if there is an urgent need that requires immediate legal action (urgency) and the opposing party is reluctant; there is no precedent that the decision is final and binding so that it must be accepted; and it is difficult to choose good services since there is no quality standards or consistent regulations for dispute resolution ([Service Advices Alliance, 2013](#)). The Financial Services Authority/OJK seems to understand the Alternative Dispute Resolution Institutions' weaknesses, especially the lack of quality standards and strong regulations that are able to anticipate FSS developments. Therefore, strengthening alternative dispute resolution regulations through integration is the answer to the problem.

#### **D. Integrated Alternative Dispute Resolution Institutions in FSS: Optimization of Consumer Dispute Resolution**

The strengthening of Alternative Dispute Resolution Institutions in FSS regulations aims to ensure that dispute resolution services in FSS are carried out independently, fairly, effectively, and efficiently, as well as accessible; and trusted by consumers and business actors. The integrated alternative dispute resolution institutions in FSS is formed to handle all disputes in FSS, both conventional and Sharia. In addition, it is hoped that it will produce the same service quality standards for all consumers and make it easier for consumers to resolve disputes, including the ones arising from the use of financial products and services that involve more than 1 (one) financial service sector. In addition, the establishment of the integrated alternative dispute resolution institutions in FSS is expected to

minimize the operational costs of the alternative dispute resolution institutions by utilizing technological developments, while maintaining service quality. The strengthening of regulations in the integrated alternative dispute resolution institutions in FSS includes the following:

**1. Integrated Alternative Dispute Resolution Institutions in FSS is a Dispute Resolution Outside of Court**

Article 3 and 4 of the POJK on Integrated Alternative Dispute Resolution Institutions explicitly regulate the functions, duties, and authorities of the alternative dispute resolution institutions in FSS. Article 3 states that the settlement of consumer disputes in FSS outside the court is carried out through the integrated alternative dispute resolution institutions. This also ends doubts with regards to the alternative dispute resolution institutions position as the consumer dispute settlement institution outside the court in FSS ([Wibowo, Sukarmi, & Hamidah, 2019](#)). Article 1.12 and 1.13 of POJK on Integrated Alternative Dispute Resolution Institutions should be understood that disputes between consumers and business actor due to losses or potential financial losses that are suspected due to errors or negligence of the business actors arising both from legislation and from agreements. This interpretation refers to the activities of placing funds or utilization of services/products of business actors by consumers that are also based on the agreement set forth in the agreement. With regard to authority, POJK on Integrated Alternative Dispute Resolution Institutions in FSS explicitly regulates the scope of authority in Article 4, namely: carry out the handling and settlement of consumer disputes; provide dispute resolution consultations in FSS; conduct research and development of dispute resolution services in FSS; make regulations in the context of dispute resolution at FSS; cooperate with both national and international consumer protection institutions/agencies; and conduct capacity building of mediators and arbitrators registered with alternative dispute resolution institutions in FSS.

**2. Integrated Alternative Dispute Resolution Institutions is a Legal Association**

POJK on Integrated Alternative Dispute Resolution Institutions in FSS regulates that alternative dispute resolution institutions must be in the form of a legal association registered with the Ministry of Law and Human Rights. As a legal entity, alternative dispute resolution institution is a legal subject that has rights and obligations both as stipulated in the Articles of Association as well as laws and regulations. Thus, besides having clear objectives, alternative dispute resolution institutions' legal entity must have an organ and at least consist of a General Meeting of Members, Supervisors, and Management; have separated assets; and responsibility as a legal subject. By a means of strong institutional arrangements, alternative dispute resolution institutions in FSS are expected to be able to protect and maintain

the stakeholders' trust, as well as ensure compliance with the provisions of laws and regulations.

### 3. Principles of Integrated Alternative Dispute Resolution Institutions

The principles applied in the dispute resolution mechanism in the POJK on Integrated Alternative Dispute Resolution Institutions and POJK 1/2014 are generally the same, however, there are several differences in the explanation of each principle. The following are the substance-related differences in the alternative dispute resolution institutions principles.

- a. Accessibility Principle: POJK on Integrated Alternative Dispute Resolution Institutions affirms that it "mandates" that Alternative Dispute Resolution Institutions have services and procedures for dispute resolution that are easily accessible.
- b. Principle of Independence: POJK on Integrated Alternative Dispute Resolution Institutions emphasizes that Alternative Dispute Resolution Institutions must have a supervisory organ; shall consult with relevant stakeholders in amending regulations prior to implementing them; and must have adequate resources to carry out their functions.
- c. Fairness Principle: POJK on Integrated Alternative Dispute Resolution Institutions must contain regulations in making agreements and/or decisions. In addition, alternative dispute resolution institutions are required to provide written reasons for: refusal of dispute resolution requests and/or dispute resolution decisions by Arbitrators. In contrast to POJK 1/2014 that regulates provisions in decision making in the Article, POJK on Integrated Alternative Dispute Resolution Institutions explains the content of regulations in making agreements and/or decisions in the explanation of articles. In addition, POJK on Integrated Alternative Dispute Resolution Institutions no longer uses the term "adjudicator", but "mediator" and "arbitrator". Furthermore, Article 30 Paragraph (2) explains the reasons for rejection of the request for dispute resolution, including: 1) the dispute has never been submitted to business actor or the dispute is not related to FSS; and 2) with regards to administration, such as incomplete dispute documents.
- d. Efficiency and Effectiveness Principles: Article 31 Paragraph (2) POJK on Integrated Alternative Dispute Resolution Institutions regulates that alternative dispute resolution institution is obliged to charge affordable fees to consumers in dispute resolution. Meanwhile, POJK 1/2014 uses "low-cost". Furthermore, Article 30 Paragraph (2) of POJK on Integrated Alternative Dispute Resolution Institutions explains what is meant by affordable cost. Affordable costs can be measured by comparing the costs of dispute resolution at alternative dispute resolution institution with the ones at other institutions, agencies, or bodies that have other dispute resolution functions.

The overall principles that alternative dispute resolution institutions must apply in providing these services are needed to create faster and cheaper dispute resolution and produce objective, relevant, and fair decisions or agreements. Through the alternative dispute resolution institutions dispute settlement that has a strong legal basis, there will be legal certainty for both consumers and business actors with regards to the disputes that arise.

#### **4. The Criteria of Dispute to Handle and Method of Dispute Resolution in Alternative Dispute Resolution Institutions**

Based on Article 32 Paragraph (1) of POJK on Integrated Alternative Dispute Resolution Institutions, the alternative dispute resolution institutions can handle disputes with the following criteria: complaints that have been resolved by business actor but are rejected by the clients or consumers have not received a response to the new complaint as regulated in POJK No.18/POJK.07/2018; the dispute filed is not the one in progress or has been decided by a judicial, arbitration institution, or other alternative institution for resolving the issue; and the dispute is a civil case. Besides the disputes mentioned in Paragraph 1, Article 32 (2) allows integrated alternative dispute resolution institutions to handle other disputes that have received approval from OJK. Meanwhile, the dispute settlement mechanism can be carried out either through face-to-face before a mediator or arbitrator; electronic media; and/or document checking. Dispute resolution through electronic media can be conducted through long-distance communication that allows all parties to listen to each other; or see and listen to each other; as well as to directly interact and participate in meetings. Furthermore, integrated alternative dispute resolution institution is obliged to administer all information and data related to dispute resolution.

#### **5. Security and Provision of Information and Documents**

Based on Article 34, OJK Integrated Alternative Dispute Resolution Institutions are obliged to implement control over information security and/or documents in every electronic system used in dispute resolution efforts. The control over information security means: confidentiality; integrity; availability; authenticity; undeniability; control of duties and responsibilities; and maintenance of the audit trail. The Financial Services Authority or OJK can request information and/or documents from the alternative dispute resolution institutions by letter and/or electronic mail in the context of: a. approval by OJK; or OJK's need for information and/or other documents. Upon such request, the alternative dispute resolution institution is obliged to provide information and/or documents no later than ten working days from the date the request for information and/or documents is received.

#### **6. Report of Integrated Alternative Dispute Resolution Institutions**

Based on Article 36, integrated alternative dispute resolution institutions are obliged to submit periodic reports every three months on March, June,



September, and December to OJK no later than the 10<sup>th</sup> of the following month. Report submission is conducted through an electronic reporting system provided by OJK. In the event that the submission of reports through the electronic reporting system experiences a disruption, the submission will be made by letter to the unit that carries out consumer education and protection functions. In addition, the integrated alternative dispute resolution institutions must submit in writing the name of the business actors that do not implement the alternative dispute resolution institutions agreement or decision to the OJK no later than 10 working days from the deadline for implementing the agreement or decision. If the obligation to submit the report falls on a Saturday, Sunday, or holiday, the obligation is submitted no later than 1 (one) subsequent working day.

#### 7. Sanctions for Violation of the Provisions Stated in POJK on Integrated Alternative Dispute Resolution Institutions

In accordance with the duties and authorities of OJK, Article 39 stipulates that OJK has the authority to impose administrative sanctions against alternative dispute resolution institutions and/or business actors that violate POJK on Integrated Alternative Dispute Resolution Institutions in the form of written warnings, replacement of Management and/or Supervisors; fines or the obligation to pay a certain amount of money; restrictions on business activities; and/or freezing of business activities. The fines, restrictions on business activities, and freezing of business activities may be imposed with or without written warnings. The detail can be seen in POJK on Integrated Alternative Dispute Resolution Institutions.

Through institutional and governance strengthening, dispute resolution services by integrated alternative dispute resolution institutions will be more effective and efficient while still adhering to the principles of confidentiality and win-win solutions. Thus, it will be able to protect and maintain the trust of stakeholders, as well as ensure compliance with the applicable laws and regulations.

### IV. Conclusion

After conducting a study of secondary data in the form of primary, secondary, and tertiary legal materials, as well as from the results of qualitative juridical analysis, it can be **concluded**: an integrated alternative dispute resolution institution is the final step for FSS consumers and business actors in resolving disputes outside the court. Disputes resolution through the integrated alternative dispute resolution institutions can only be conducted after consumers have filed a complaint with the business actor based on POJK Number 18/POJK.07/2018 on Consumer Complaint Services in FSS (internal dispute resolution) or use the complaint service for settlement efforts provided by OJK. OJK can facilitate consumer complaints resolution through both facilitation and limited facilitation settlement efforts as regulated in POJK Number 31/POJK.07/2020 on the Implementation of Consumer and Community Services in FSS by OJK. The clause

for selecting dispute resolution through litigation or non-litigation is included in the agreement and/or financial transaction document between the business actors and the consumer or it can be the same part of the financial transaction agreement. Strengthening of regulations on integrated alternative dispute resolution institutions is an effort taken by OJK to anticipate the rapid changes in FSS structure in terms of regulations, technological developments, and the diversity of services and products that are cross-financial services. The integrated alternative dispute resolution institutions will end doubts about the consumer dispute resolution institution. In addition it will be easier for consumers to resolve disputes with business actors and obtain optimal protection through the application of dispute resolution principles and the nature of disputes that are confidential and win-win solutions.

## References:

### *Journal articles:*

- Abubakar, L. (2013). Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia. *Jurnal Dinamika Hukum*, 13(2), 319–331. <http://dx.doi.org/10.20884/1.jdh.2013.13.2.213>
- Abubakar, L., & Handayani, T. (2019). PERLINDUNGAN HUKUM INVESTOR DIPASAR MODAL MELALUI FUNGSI PENJAMINAN PENYELESAIAN TRANSAKSI BURSA. *Rechtidee*, 14(1), 61–84. <https://doi.org/10.21107/ri.v14i1.5369>
- Aldlaigan, A. H., & Buttle, F. A. (2001). Consumer involvement in financial services: An empirical test of two measures. *International Journal of Bank Marketing*, 19(6), 232–245. <https://doi.org/10.1108/EUM0000000006022>
- Budnitz, M. E. (1994). Arbitration of disputes between consumers and financial institutions: a serious threat to consumer protection. *Ohio State Journal on Dispute Resolution*, 10(2), 267–342.
- Dahlan, N. K. (2018). Alternative Dispute Resolution for Islamic Finance in Malaysia. *MATEC Web of Conferences*, 150. <https://doi.org/10.1051/mateconf/201815005077>
- Kawiński, M. (2014). Pozasądowe rozstrzygnięcie sporów a ochrona konsumentów branży ubezpieczeniowej. *Prace Naukowe Uniwersytetu Ekonomicznego We Wrocławiu*. <https://doi.org/10.15611/pn.2014.342.10>
- Komite Nasional Keuangan Syariah. (2018). Masterplan Ekonomi Syariah Indonesia 2019-2024. *Kementerian Perencanaan Pembangunan Nasional/ Badan Perencanaan Pembangunan Nasional*.
- Kriese, M., Abor, J. Y., & Agbloyor, E. (2019). Financial consumer protection and economic growth. *International Journal of Emerging Markets*, 14(5), 1060–1080. <https://doi.org/10.1108/IJOEM-05-2018-0229>
- Lumpkin, S. (2010). Consumer Protection and Financial Innovation: A Few Basic Propositions. *OECD Journal: Financial Market Trends*, 2010(1), 1–23.
- Otoritas Jasa Keuangan. *Penjelasan Umum POJK No. 18/POJK.07/2018 Tentang Layanan Pengaduan Konsumen di Sektor Jasa Keuangan*, (2018).

- PWC. (2019). Financial Services Technology 2020 and Beyond. *Civil Engineering Magazine Archive*, 89(1), 70–83.
- Rahmawati, E., & Abubakar, L. (2019). PERANAN PENYELESAIAN SENGKETA PASAR MODAL: SUATU TINJAUAN ATAS PERKARA PERDATA TERKAIT TRANSAKSI REPO. *Jurnal Bina Mulia Hukum*, 4(1), 130–149.
- Rahmawati, E., & Mantili, R. (2016). Penyelesaian Sengketa Melalui Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan. *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 3(2), 240–260. <https://doi.org/10.22304/pjih.v3n2.a2>
- Rinaldi, A., & Fahamsyah, E. (2020). PERLINDUNGAN KONSUMEN SEKTOR JASA KEUANGAN ATAS PENYALAHGUNAAN DATA PRIBADI PADA APLIKASI KREDIT ONLINE. *Jurnal Hukum Adigama*, 3(1), 964–987. <https://doi.org/http://dx.doi.org/10.24912/adigama.v3i1.8935>
- Santilln-Salgado, R. J. (2015). Global Regulatory Changes to the Banking Industry after the Financial Crisis: Basel III. *SSRN Electronic Journal*, 11(2), 83–100. <https://doi.org/10.2139/ssrn.2692045>
- Septyanun, N. R. R. H. (2020). Diseminasi Online Model Perlindungan Hukum Bagi Nasabah Perbankan Akibat Force Majeour Covid-19 di Kota Mataram. *Community Engagement & Emergence Journal*, 2(2), 69–76. <https://doi.org/https://doi.org/10.37385/ceej.v2i1.132>
- Wibowo, A. M., Sukarmi, S., & Hamidah, S. (2019). ANALISIS YURIDIS KEWENANGAN PENYELESAIAN SENGKETA PEMBIAYAAN KONSUMEN DI INDONESIA. *Legality : Jurnal Ilmiah Hukum*, 27(2), 41. <https://doi.org/10.22219/jihl.v27i1.8957>
- Poisto & Hamed Alavi (2016). Abuse of Dominant Market Position by Predatory Pricing; The Valio Case. *Hasanuddin Law Review*, 2(1), 24–37. doi: <http://dx.doi.org/10.20956/halrev.v1n1.212>

#### **World Wide Web:**

- Otoritas Jasa Keuangan. (2016). Tentang Daftar Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan. Retrieved from [https://www.ojk.go.id/id/berita-dan-kegiatan/pengumuman/Documents/DAFTAR\\_LAPS.pdf](https://www.ojk.go.id/id/berita-dan-kegiatan/pengumuman/Documents/DAFTAR_LAPS.pdf)
- Otoritas Jasa Keuangan. (2021a). *Bahaya Fintech P2PL Illegal*. Jakarta. Retrieved from [https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/P2PL\\_legal\\_vs\\_ilegal.pdf](https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/P2PL_legal_vs_ilegal.pdf)
- Otoritas Jasa Keuangan. (2021b). Lampiran II -Daftar Fintech Peer To Peer lending Illegal September 2020. Retrieved from [https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Documents/Pages/Siaran-Pers-Satgas-Waspada-Investasi-Tutup-126-Fintech-Lending-Illegal-dan-32-Investasi-Tanpa-Izin-/Lampiran II P2P Illegal September 2020.pdf](https://www.ojk.go.id/id/berita-dan-kegiatan/siaran-pers/Documents/Pages/Siaran-Pers-Satgas-Waspada-Investasi-Tutup-126-Fintech-Lending-Illegal-dan-32-Investasi-Tanpa-Izin-/Lampiran%20II%20P2P%20Illegal%20September%202020.pdf)
- Service Advices Alliance. (2013). *Why use ADR? Pros & cons*. Retrieved from <https://asauk.org.uk/wp-content/uploads/2013/08/Why-use-ADR.pdf>