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Mediation as A Model of Banking Dispute Resolution in Indonesia

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Abstract: The trust underlying the relationship between the customer and the bank may be lost if one of the parties breaches a dispute. Conventionally the dispute resolution chosen is based on a standard agreement between the two, namely through litigation / court. The parties tend to ignore the path of non-litigation resolution which in truth ensures the trust can be re-established, namely mediation. Based on the above, this research was conducted using doctrinal method using library study supported by focus group discussion. Mediation is the right choice. The tribunal has a long-lasting and costly tendency, so nature tends to be more dominant for the bank as the ruler of capital. Customer's ignorance is the source of why the resolution model through mediation tends to be largely unselected.

Keywords: Bank, Customer, Mediation, Dispute Resolution

A. INTRODUCING

Banking is a financial institution that has a function as a financial intermediary institution as an institution that conducts fund raising activities from the community in the form of savings and channeling it back to the community in the form of credit or financing. In addition, the banking institution is also a trust agent considering the existence of one of the principles of bank management namely the principle of trust (Zulfi Diane, 2012: 1).

The relationship that is built between the customer and the bank is a contractual relationship, established because of the agreement made by the parties. The agreement contains rights and obligations between the parties. The bank as a service provider with various products offered, and customers as users of banking services by using various products (Pujiyono, 2018). As a financial institution, of course the bank did not escape from the existence of problems or disputes with customers. In the event of a dispute between the bank and the customer, there are two ways of dispute resolution, namely the settlement of litigation and non litigation disputes. Litigation is through court litigation and non litigation is the settlement of disputes through out-of-court channels such as mediation, negotiation and arbitration.

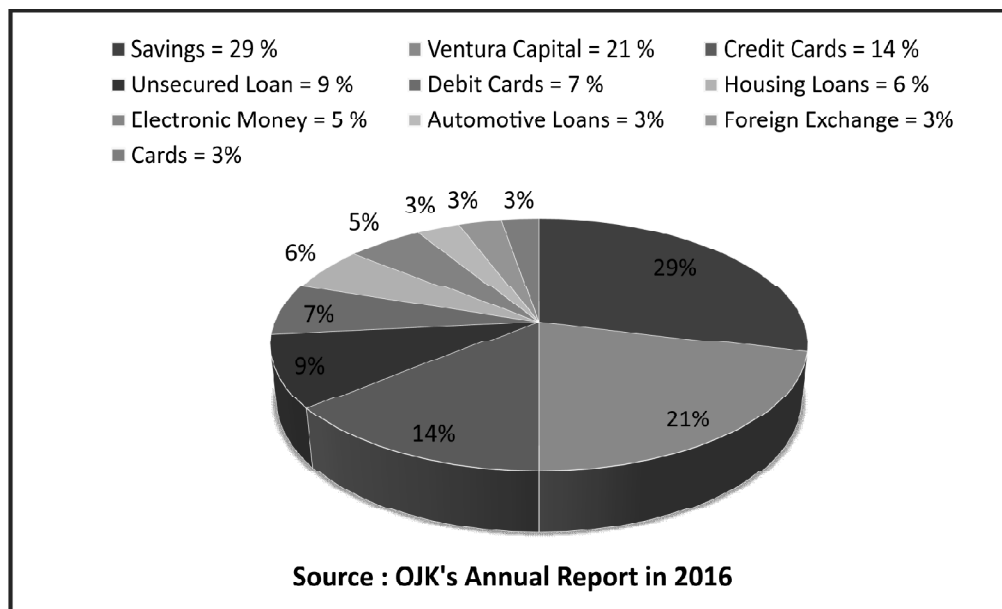
Dispute resolution is important because the increasing number of disputes and length of dispute resolution can hamper banking business activities and also affect the reputation of banks in the community, so it is imperative that effective dispute resolution and dispute settlement procedures are not so convoluted that they take a long time. Among some dispute settlements, the author examines one type of dispute settlement in the banking sector through a mediation path that is considered more effective than other dispute settlements because it does not take a long time and not a lot of cost is a win-win solution, so no party loses and disputes are resolved through agreements between mediated mediating parties. Only the problem is less popular mediation, so rarely used by customers or banking when looking for dispute resolution.

B. METHOD

This type of this research is normative. Using the regulation approach. Sources and Types of legal materials are primary legal materials in the form of regulation, especially those related to the Banking disputes resolution, namely Law Number 21 Year 2011 on Financial Services Authority, OJK Regulation No. 1/POJK.07/2013, on Consumer Protection, Number 1/POJK.07/2014 on Alternative Dispute Resolution Institutions; Secondary Legal Materials in the form of legal materials related to the source of primary legal material and related to primary law sources, among others are books and journals related to banking.

C. DISCUSSION

Bank is a financial intermediary, thus the bank has the main function of collecting funds from the community and channeling funds. The principal functions of the bank are three, namely, collecting funds from the community, managing the funds managed into various productive assets and providing payments services and other banking services. From the various businesses of the bank then created legal relationships between banks and their customers (Nahdhah, 2016:124). With such a legal relationship, there is no possibility of violations in the banking sector, resulting in disputes between the Customer and the Banking Parties. Below is the trend data of infringement per product in Year 2016, where this data shows that alleged violation dominated by product in banking sector.



From the above data in 2016 there was a trend of violation are Savings: 75, Venture Capital: 55, Credit Card: 37, Unsecured Loans: 24, Debit Card: 17, Housing Loans: 15, Electronic Money: 14, Automotive Loans: 8, Foreign Exchange: 8, Card: 7. From the above chart it can be seen that the alleged violation is dominated by banking products. As the economy and technology grows, the number of violations especially in the banking sector increases. In 2016, there were 101 complaints services to the OJK in 2016. 37.62% (38 of them) are complaints related to Banking, related to product issues not in accordance with the offer and cancellation of Bank accounts (Annual Report of the Financial Services Authority/OJK 2016, 136). Then in the report of Tri Wulan 1- 2017 the total number of complaints services to the OJK are 21 of its 71.43% complaints (15 Complaints) are banking related complaints of Quarterly Report 1-2017 OJK). From the above data, it is clear that complaints related to banking issues are dominant in the service complaints service financial services. Banking sector is dominating the economic aspects of a country, and greatly affects the economic growth of the country. Therefore, it is desirable that there will be no disputes over Banking, because the increasing number of dispute problems in the banking sector will have an impact on economic growth.

On dispute resolution between the customer and the bank, there are two models that can be reached, the first is the litigation dispute resolution model or through the judicial system, and the second is the non-litigation dispute resolution model or the path taken outside the court or often called Alternative Dispute Resolution (ADR). ADR typically refers to processes and techniques of solving disputes that fall outside of the judicial process i.e. formal litigation. Courts are increasingly encouraging parties to utilize ADR of some types, most often court assisted mediation or conciliation are attempted before parties' case are heard. The key features of an ADR Scheme is that a so-called third party (an ombudsman, a mediator, conciliator or a compliant board assists the consumer of the service provider to resolve their dispute by proposing or imposing a solution or by bring the parties together to convince them to find a solution by common agreement (Adeola A, 2015: 1). The role of alternative dispute resolution (ADR) in efforts to strengthen the rule of law is attracting increased interest in international development cooperation. From a development perspective, the principal interest in this question is a concern for expanding rights and opportunities for poor people who do not fully benefit from the protection of the law in their daily lives. Other interests in ADR, such as in commercial arbitration and court-annexed mediation in civil litigation, also have important positive implications for development. Facilitating commerce and expediting the disposition of lawsuits are valuable services and worthwhile undertakings. However, the principal focus for development is on the non-formal processes intended to expand access to justice (James Michel, 2011:1). Alternative Dispute Resolution is likened to an informal justice system. One of its significance is that it "strengthens access to justice for poor and disadvantaged people (Oyesola Animashaun, 2014: 678).

One form of ADR is mediation, that belived to be more effective than dispute settlement through the litigation path, because is a win-win solution, which benefits both parties and does not take a long time. Mediation is a dispute resolution effort involving a neutral third party as a mediator, who has no decision-making authority, only authorized to assist the parties to the settlement to reach a resolution (solution/agreement) received by both parties. (Pujiyono, 2012: 74). Mediation aims to reach a peace agreement in which both parties to the dispute are brought before a mediator to solve the problem peacefully without going through the judicial process. The role of third parties as mediators in mediation is very important, because the mediator acts as a middle ground seeker to solve the problems experienced between the

customer and the bank. Basically the peace agreement made between the customer and the bank through the mediation path is made by the parties that helped by third party, namely the mediator, so that whatever has been agreed by the parties is the desire of the respective parties and does not harm either party, or often called a win-win solution. Based on OJK Regulation Number 1/POJK.07/2013 concerning Consumer Protection of Financial Services Sector and POJK Number 1/POJK.07/2014 regarding Alternative Dispute Resolution Institutions in the Financial Services Sector in relation to Banking, in the case of non-compliance handling agreement, the dispute resolution can be continued through the Alternative Dispute Resolution Institution in the financial services sector, where in the Banking sector the settlement of disputes through out-of-court channels is conducted by the LAPSPI (Indonesian Banking Dispute Resolution Settlement Alternative Institution- Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia).

Based on data from the OJK's performance report for 2012-2017, in 2016 LAPSPI has received a request for settlement of a Banking dispute of 32 applications, whereby the request for dispute settlement is pursued through mediation. Then in Quarter 1-2017, there were 6 submissions dispute settlement submitted to LAPSPI, where the request for dispute settlement was pursued through mediation. (Performance Report of the Financial Services Authority 2012-2017, 110).

Trough mediation of confidentiality between the Bank and the Customer is more awake, and the agreement is obtained between both parties and also assisted by the mediator, so the settlement of the dispute is carried out in a peaceful manner and in accordance with the agreement of the parties. Subject to the provisions of Article 1 paragraph 1 sub-paragraph b of the Alternative Indonesian Banking Dispute Settlement Regulation Number 07/LAPSPI-PER/2015 Regulations and Procedures of the Mediation of the Management of Alternative Institutions of the Indonesian Banking Dispute Settlement Mediator is a neutral party assisting Parties in the process of negotiation in Mediation LAPSPI to look for various solutions but Mediators are not allowed to disconnect or enforce a settlement. The increasingly mediation as an alternative settlement of disputes, especially in the Banking sector is expected to have a positive effect on economic growth, because the better settlement of disputes outside the court lane hence affect the fundamentals of the country's economy, especially related to disputes of economic problems such as banking. The importance of dispute settlement through mediation is because this mediation is a process of dispute resolution by seeking agreement between the two parties in dispute, so that it can create a legal purpose that is the creation of justice, because the end result of the mediation is the achievement of the result which has been agreed by the party disputes.

Mediation is expected to be resolved quickly and well. In addition, in the event of a dispute it must continue to put forward the principle of justice, without partiality, and one who helps to solve the problem of mediator if in helping the dispute settlement process must be neutral in favor of either party, without any influence and intervention from any party, and also transparent to all parties, thus ensuring the legal certainty of each party and can create the principle of justice, where the main purpose of the law is the creation of justice. In assisting the mediator's dispute settlement process must be intermediate between the two parties, so the dispute can be resolved promptly and peacefully, and also does not interfere with banking business activities.

Basen on trends of violations in the banking sector and the number of complaints to the Financial Services Authority, as described above, it is clear that there is a significant difference in the number of violations more than the number of complaints to the financial services authorities. Based on the data it

can be concluded that there are still violations that are not processed, so there is no continuation of the violation, it should see that the OJK take firm action against violations especially related to banking, so the number of violations in the banking sector decrease and increase public trust especially regarding banking products.

D. CONCLUSION

LAPSPI was established by OJK serving mediation dispute resolution. This model is more effective than dispute resolution through the court, because the dispute resolution through this mediation does not take a long time such as dispute settlement in court, so it would not interfere with the parties business activities and also better maintain the reputation and credibility of banks in the community, so as not to reduce public trust on banking. OJK as a Banking Authority has to socialize more expansive to all of banks and customers about the existence of mediation as banking dispute resolution.

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