
Analysis Of Dispute Types And Dispute Settlement Models In Banking

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ABSTRACT

This article discuss about type discord dispute and settlement models disputes in the banking world. Target from study this for knowing types dispute in the world of banking and know method solution dispute in the world of banking. Method used _ is method study normative, with use a number of approach among others: approach legislation, approach conceptual, and approach analysis. Data used is secondary data consisting of from ingredient primary law, material law secondary , and material law tertiary . Dispute in the banking world that often one of them appears is credit jammed. Research results this find that type dispute existing dispute _ in the world of banking caused by the occurrence credit jams and cases fraud by party banking. Solution dispute banking There are two events namely by litigation (court) and non- litigation (alternative solution dispute dilauro court). Solution banking world disputes looked at need for emphasize implementation existing regulations _ so that with push number risk credit crash and feedback by fast from the bank

Keywords: Disputes, Completion Model, Dispute, Banking

INTRODUCTION

Banking as one of the National Institutions and International Keep going compete and help capital customers in Indonesia. one _ function main from the bank as function intermediation, that is activity disbursement of customer funds from saver or owner of funds to borrower of funds with the bank as intermediary activity banking the in Indonesia 's economy continues developed especially in field law. in harmony with Article 1 number 1 of the Law Number 7 of 1992 which was later changed Becomes Constitution Number 10 of 1998 concerning Banking, "*Banking is all something concerning _ about banks, including institutions, activities effort, as well methods and processes in doing activity his efforts.*"(1)

Banking is effort very important service in support development something nation, where function banking as institution intermediary (intermediation) raises funds from community, and so on channel return the funds through gift facility to society that needs it. With gift credit means help community inside increase life its economy. In operate activities in the banking world, the more aggressive banking in offer amount products, such as card credit, platform cash independent, as well as various form credit and savings to Public wide, opportunity occur dispute Among banks and their customers the more open wide.(2)

Existence potency dispute in the world of banking need be addressed with give facility good protection to consumers in the sector service finance. Enforcement Constitution Number 21 of 2011 concerning The Financial Services Authority (OJK Law) brings hope and certainty that interest consumer could protected with good with implementation activity sector service regular, fair, transparent, and accountable finances as well as capable realize system growing finance _ by sustainable and stable, and capable of protect interest consumers and society.(3)

Existence dispute in banking caused by several one of the factors party banking or customers who do default (no ability customer in operate obligation for pay dues, because factor economy, factor state forced or because overmacht or no capable To do achievement or complete obligations and regulated in Article 1234 of the Civil Code. Besides that too, there is dispute bank because happening expenses oppose law, regulated in Article 1365 of the Civil Code.(3)

There are also problems dispute that is not only Among banking with customer, but bank 's inability to complete obligations (in state bankruptcy) then later will finish dispute to Court Regulated trade _ in Law no. 37 of 2004. Every existing dispute _ have their respective realms , no can the dispute what solved where . Formulation and solution format dispute there is, by litigation and non- litigation and has advantages and disadvantages.(4)

Credit congested or financing problems that occur in banks are greatly influenced by many factor, good that from the bank's internal performance and from external bank such as condition macro economy. In period short or in period short or in Long term, change variable macro very influential economy against NPF. Slowdown economy suspected strong be one _ factor main from height financing problematic in Islamic banking and credit jam on banking conventional. Growth healthy economy _ identify activity everlasting economy _ move to more direction _ good. This thing will push growth the final financing will affect financing the problem(5).

What just types dispute in the banking world ? How is the solution model dispute banking ? As for the Purpose from study this is for knowing what just types dispute in the world of banking . And for know the solution model banking disputes. _ Benefit by academic study this expected could used as base thinking in effort development science with discipline knowledge in the field law civil economy in scope knowledge law banking especially solution dispute banking. by practical, research this expected could Becomes reference for researcher next.

METHODS

In doing study this use Type Research used _ that is study Doctrinal (law normative) research law doctrinal (Normative) with approach First Approach legislation (Statute Approach) namely study all regulation the relevant legislation adrift with problem (issue law) that is being faced Second Approach Conceptual (Conceptual Approach) namely view or growing doctrine _ in knowledge law could Becomes footing for build argument law when complete issue the law at hand .(5)

Temporary Type of Data used are primary and secondary data , while data source is first primary data is obtained past Interview deep and structured with sample chosen use purposive sampling method , both secondary data is the one that explains about ingredient primary law , such as design laws , results research , results creation from circles law and so on . Next Data analysis is done with started from data categorization , data validation , interpretation and retrieval conclusion . As ingredient law is is with method gather whole materials law , after issue study has set , so issue law already set _ researcher To do search for look for materials relevant law _ with issues faced(6)

RESULTS

Types Of Banking Disputes

The bank or the customer who is in default (the customer's inability to carry out the obligation to pay contributions, economic factors, forced circumstances. Or because of overmacht / unable to perform its achievements or complete its obligations and is regulated in Article 1234 of the Civil Code. Disputes due to illegal financing are regulated in Article 1365 of the Civil Code. The dispute is not only between banks and customers, but the bank 's inability to settle its obligations, in a state of bankruptcy, will later go to the commercial court as regulated in Law no. 37 of 2004.

Currently, Indonesia is still in the development stage, where the development that is being carried out at the present time is far more developed than in the past, especially the period before independence. One of the most noticeable developments is modern banking activities. The modernization of banking has led to the emergence of legal relations between humans

called agreements which are increasingly modern. The birth of an agreement between humans to interact with each other becomes an unavoidable process that will bring about legal relations between parties who have made an agreement, for example in an agreement between a bank and its customers which has brought a legal relationship.(7)

In skeleton face development economy everlasting national _ move fast , competitive and integrated with increasingly challenging _ complex as well as system increasingly financial _ forward , then required adjustment policy in the field economy , including banking . Improvement Settings law banking as loaded in Constitution Number 7 of 1992 is for more in accordance with developments and policies in the field economy(8). Regarding with consideration that , explanation general on Constitution Number 10 of 1998 between other state that :

" development " economy national mature this show increasingly direction _ merges with regional and international economies that can support at a time could impact not enough profitable . Temporary that , development economy national always move fast with increasingly challenging _ complex . because of that , needed various adjustment policy in the field of economy including the banking sector , so that expected will could repair and strengthen economy national . Sector banks that have potency strategic as institution intermediation and support system payment , is very decisive factor in the process of adjustment meant . in relation with that , needed improvement to system banking non - national only covers effort healthy bank individually , but also healthy system banking by thorough . Effort health banking national Becomes not quite enough answer together Among the government , the banks themselves , and society user banking services . Existence not quite enough answer together the could play a role by maximum in economy national " .

Article 1 number 2 of Law Number 7 of 1992 concerning Banking as amended by Law Number 10 of 1998 stipulates that "a bank is a business entity that collects funds from the public in the form of savings and distributes them to the public in the form of credit and/or other forms of others in order to improve the standard of living of many people . "(9).

Based on the above formulation, it can be understood that "banking institutions are financial institutions that act as intermediaries between parties who have excess funds (surplus if funds) and parties who need or lack funds (lacks of funds), of course they need funds . in carrying out its business activities or operations (10).

Indonesia is one of the countries that adhere to dual banking system where There are conventional banks and Islamic banks which are confirmed street Constitution Number 10 of 1998. Bank Indonesia as holder authority banking in Indonesia needs prepare device working rules and facilities _ as capable support _ support operational banking shari'ah , and things the already set in Constitution Number 23 of 1999 concerning Bank Indonesia. (11) Types of Banking in Indonesia are divided into two types of banking, namely banking that conducts business conventionally (based on interest payments) and banking that conducts business in sharia (based on profit sharing)(12) . Regulations regarding Indonesian banking are divided into two based on the types, among others: (a) Law Number 10 of 1998 in conjunction with Law Number 7 of 1992 concerning Banking; and (b) Law Number 21 of 2008 concerning Sharia Banking.

operating banks by conventional, the main bank income originated from calculated interest _ based on percentage certain from loans granted by banks, and in addition to that conventional banks also have obligation for pay as big as percentage certain or stash from its customers . While operating banks by sharia principles, obtain income with existence distribution calculated profit _ by proportional Among loan or loans granted by banks with total capital that has company in Thing this is customer financing / credit. Operating results the shared in accordance with deal on time contract existing financing _ Approved both and written in ratio . Like as in conventional banks, operating banks by Sharia principles also have obligation for give in form for results after calculated by proportional to total number of each type savings.(13)

In this regard, banks offer a number of products to the wider community, the opportunities for disputes between banks and their customers are increasingly wide open. The problem is, the dispute was often considered "one eye" by the banking community. What's more, the problem was the "small-scale" customers(14).

DISCUSSION

Post Constitution Number 21 of 2011, settlement dispute banking obligatory solved more previously by Financial Services Business Actors (Division) Complaint Mandatory consumer

_ owned by every Financial Services Actors including Banks) and if no reached an agreement so could solved through the Alternatid Institute Solution Disputes that are not only solved mediation but There is also mandatory adjudication and arbitration formed by the Association Banking.

one _ reject measuring health a bank can rated from fluent or whether or not taking financing or disbursed investment. _ Parameters in measure financing problem or credit congested could seen from ratio non-performing loan (NPL) for conventional banks or non-performing financing (NPF) for Islamic banks. the size the ratio of NPL and NPF obtained by Bank Indonesia is 5 percent. If it exceeds 5 percent so will affect evaluation the soundness level of the bank concerned(15).

Meaning formation Constitution Number 21 of 2008 concerning Sharia Banking (Sharia Banking Law) can seen in the " consideration " section weigh ". In Thing this deserve be observed four terms , namely : (i) that in line with destination development Indonesian national for reach creation Public fair and prosperous based on democracy economy , developed an economic system based on the value of justice , togetherness , equity , and appropriate benefits with sharia principles ; (ii) that needs Indonesian people will services Islamic banking in Constitution Number 7 of 1992 concerning Banking as has changed with Constitution Number 10 of 1998 not yet Specific so that need set by special in something Constitution separately .

As put forward previously one _ function banking as community fundraiser _ with method give credit , so give birth to connection law between the bank (creditor) and the customer borrower of funds (debtor). In Constitution Number 7 of 1992 as has changed with Constitution Number 10 of 1998 which is called with " Customer " Debtor ” means “ Customer who obtains facility credit or financing based on bank agreement with the customer concerned " .

Giving that bank credit is something agreement between the bank and party borrower (customer debtor). Agreement the born based on deal borrow-borrow between the bank and borrow funds. In practice banking , such an agreement common named with " agreement " credit (bank)".(16)

Even though the bank is in give credit no once want that credit given _ will Becomes problem loans, and for necessity that the bank will to do all effort possible preventive _

conducted for prevent credit _ no problematic, however no impossible in the end credit still problematic, even _ state credit that no just simply not enough fluent or doubtful, but finally Becomes jammed. After that bank will To do efforts repressive. Efforts repressive at first will conducted is to do effort save credit. After effort made _ the it turns out no managed to save too credit that, then the bank will go through effort billing (17)

Development such banking _ significant naturally bring consequence possibility will happening something problems that can cause dispute in activity transaction banking. Dispute appear caused by various reasons and problems, especially because existence conflict on interest between the parties(18). Besides that interaction the S like that also intensively between banks as perpetrator effort with customer as consumer user service banking could cause opportunity occur friction or the shift that causes difference opinion(19). In state like this if no quick solved could changed Becomes dispute. If you see in context activity transactional banking shari'ah , dispute Among customers and banks during this more many caused by three Thing namely : (1) there is difference interpretation about the agreed contract , (2) the existence of dispute When transaction already walking , and (3) there is loss suffered by one _ party so that To do default .(20)

If Becomes something dispute, customer always be in a weak position before the bank. Weakness position customer many influenced by various aspect or factor. Position weak customer _ that take effect to behavior consumer ok by direct nor no directly , which in the end wake up our that interests and rights consumer need given protection law.(21)

Protection to aggrieved customers _ become very influential to the banking industry customer is the only one consumer product banking. In relationship with customer, bank contains risk reputation. This thing because business banking is closely related with trust. If Public believe in a bank, then will feel safe Becomes the customer of the bank concerned, vice versa distrust Public will be very influential to continuity business a bank. (22)

Related with solution dispute Islamic banking, Bank Indonesia in 2006 issued a Bank Indonesia Regulation No. 8/5/PBI/2006 Indonesia No. 10/1/PBI/2008. Completion process mediation banking this apply for Islamic commercial banks and conventional. Bank Indonesia is neutral and motivates the disputing parties for complete the dispute , Bank Indonesia does not give recommendation or verdict , verdict mediation of course pure from agreement of the disputing parties then sign deed a must deal obeyed by both split party . The role of Bank

Indonesia is sufficient effective, visible that many reported _ solved by peaceful , but still there are many people who don't knowing existence mediation that(22) .

Complaint the most related about financing customer or credit customers in the scope banking , many between customers who feel object if the collateral auctioned related financing congested or credit jammed . So with existence dispute the more good as much as possible possible could handled internally between _ customer with the bank concerned. (23)

In Thing this bank must respond and resolve every complaints and complaints submitted _ customers, especially those related to with transaction finances done _ customer through the bank. Development solution dispute a number of year final this it seems no only happens in a society that is growing, will but happens in life too community that has Up or modern.(24)

Solution dispute there is two formation, that is solution non - litigation (outside hearing court) and settlement by litigation (in hearing court) depending on the type matter , what dispute Islamic banking or not dispute banking conventional(25). If the dispute related with banking conventional of course enter within the territory of the regulated District Court in Law no. 2 of 1986 in conjunction with Law Number 45 of 2009, but if dispute Islamic banking in the contract is murabahah or mudharabah or products issued by Islamic banking of course entering the territory of the Religious Courts which refers to the updated Law number 7 of 1989 in Law Number 50 of 2009. In particular in Article 49 says that "dispute" about Islamic economics then is authority Religious Court .”(26).

CONCLUSION

Dispute in banking caused by several one of the factors party banking or customers who do default (no ability customer in operate obligation for pay dues , because factor economy , factor state forced or because overmacht or no capable To do achievement or complete obligations and regulated in Article 1234 of the Civil Code . besides that too, Dispute because happening expenses oppose law , regulated in Article 1365 of the Civil Code , disputes banking is also happening because existence fraud to party customers carried out by _ banking . Solution dispute there is two formation , that is solution non - litigation (outside hearing court) and settlement by litigation (in hearing court). If the dispute related with banking conventional of course enter within the territory of the regulated District Court in Law no. 2 of 1986 in

conjunction with Law Number 45 of 2009, but if dispute Islamic banking in the contract is murabahah or mudharabah or products issued by Islamic banking of course entering the territory of the Religious Courts which refers to the updated Law number 7 of 1989 in Law Number 50 of 2009.

REFERENCES

1. Pradipta YG, Kharisma DB. Proses Penyelesaian Sengketa Di Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI). *J Huk Dan Pembang Ekon.* 2019;2(3):293–301.
2. Salfutra RD. Mediasi Sebagai Alternatif Penyelesaian Sengketa Perbankan. *J Huk Progresif.* 2017;11(1):7,9,10,15.
3. Khodijah S. Respon praktisi pada penyelesaian sengketa perbankan syariah melalui Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI). Universitas Islam Negeri Syarif Hidayatullah; 2018.
4. Herliana M. Peran Bank Indonesia sebagai Pelaksana Mediasi dalam Penyelesaian Sengketa Perbankan. *Mimb Huk.* 2010;22(1):23.
5. Muda I. Penafsiran hukum yang membentuk keadilan legal dalam penyelesaian sengketa perbankan syariah. *J Yudisial.* 2016;9(1):37–50.
6. Rahmatika AN. Dual Banking System Di Indonesia. *Tahdzib J Stud Islam Dan Muamalah.* 2014;2(2):133–47.
7. Iqbal M. Perbandingan Pengelolaan Risiko Kredit Perbankan Syariah dan Perbankan Konvensional. *J Keuang dan Perbank.* 2017;21(3):481–97.
8. Yuliana WT. Penyelesaian Sengketa Perbankan Indonesia Melalui Alternatif Penyelesaian Sengketa Adjudikasi. Universitas Airlangga; 2020.
9. Sasongko W. Ketentuan Pokok Hukum Perlindungan Konsumen. Bandar Lampung: Penerbit UNUA; 2007. 12, 22 p.
10. Gazali D. Hukum Perbankan. Jakarta: Sinar Grafika; 2012. 267 p.
11. Siahaan RH. Penyelesaian Sengketa Perbankan Melalui Mediasi Pasca Keluarnya UU Nomor 21 Tahun 2011 Tentang Otoritas Jasa Keuangan. *Doktrina J Law.* 2018;1(1):16–30.
12. Irwansyah. Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel. Mirra Buana Media. 2021;133–52.
13. Marzuki PM. Penelitian Hukum. revisi. Jakarta: Kencana Prenada Media Group; 2005.
14. Supriyadin. Penyelesaian Sengketa Perbankan dan Aspek Hukum Dalam Perbankan [Internet]. Youtube.com. 2020 [cited 2022 Apr 19]. p. 27. Available from: <http://youtu.be/f1feaTyzIPA>
15. Sjahdeini SR. Perbankan Syariah. Jakarta: Preanada Media Group; 2018. 20 p.
16. Han JK, Kim N, Srivastava RK. Market Orientation and Organizational Performance: Is Innovation a Missing Link? *J Mark.* 1998;62(4):30–45.
17. Bayaga; A, Kyobe; M, Jacques. Criticism of the role of trust in e-government services. *Conf Inf Commun Technol Soc.* 2020;
18. Chuah SH-W, Rauschnabel, P.A Marimuthu M, Thurasamy R, Nguyen B. Why do satisfied customers defect? A closer look at the simultaneous effects of switching barriers and inducements on customer loyalty. *J Serv Theory Pract.* 2017;27(3):616–41.
19. Bowen JT, Chen sciang-lih. The relationship between customer loyalty and customer satisfaction. *Int J Hosp Contemp Hosp Manag.* 2001;13(5):213–7.
20. Pramono N. Responsibilities and Obligations of the Management of Pt (Bank) According to

- Law no. 40 of 2007 concerning Limited Liability Companies. Bull Bank Cent Bank Law Vol. 2007;5(3).
21. Othman A, Owen L. The Multi Dimensionality Of Carter Model To Measure Customer Service Quality(SQ) In Islamic Banking Industri : A Study In Kuwait Finance House. Int J Islam Financ Serv. 2001;3(4).
 22. Sivesan. Impact of relationship marketing on customer loyalty on banking sectors. South Asian J Mark Manag Res. 2012;2(3):179–81.
 23. Muzfa AA. Pengertian Tindak Pidana Pencurian pasal 362-367 KUHP. 2017.
 24. Fornell C, Johnshon MD, Anderson eugene W, Cha J, Bryant BE. The American Customer Satisfaction Index: Nature, Purpose, and Findings. J Mark. 1996;60(4):7–18.
 25. Garbarino E, Johnson MS. The Different Roles of Satisfaction, Trust, and Commitment in Customer Relationships. J Mark. 1999;63(2):70–87.
 26. Dimiyati M. Theoretical Testing On Service Quality And Product Innovation Of Small-Micro Credit Banks (A Case Study). J Econ Bus Account Ventur. 2011;14(3):225 – 238.