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## **The Function of Financial Services Authority (FSA) in Dispute Settlement Banking Customers in Indonesia**

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Zulfi Diane Zaini<sup>1</sup>

**Abstract:**

*The Financial Service Authority (FSA) in the development of the financial sector in Indonesia is expected to help the activities of financial service institutions, so that the regulation of financial services activities can be implemented and has a positive impact on economic development in Indonesia.*

*The weakness of bank supervision is one of the main causes of bank mismanagement that ultimately lead to the failure of the bank (bank failure). Bank has a special institution of trust (trust) as its main business is to collect funds (funding) from and lend (lending) to the public. The problem of this study is how the function of the FSA as a banking supervisory agencies in the settlement of disputes in Indonesia.*

*The method used in this study is normative juridical approach, the approach of examining the rules, norms, rules, related to the issues to be examined, further analysis of the data used is qualitative juridical.*

*Based on the results of study show that, the purpose of the FSA as an institution of banking supervisors in the banking dispute settlement is as a watchdog and mediator and facilitate the customer or banking institutions to resolve disputes through Alternative Dispute Resolution Institute of the FSA position as mediator in the settlement of disputes in order to get win-win solution, so that neither party feels aggrieved.*

**Keywords:** FSA Function, Dispute Settlement, Banking Customer, Institute of Banking.

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<sup>1</sup>Faculty of Law, Bandar Lampung University, Indonesia  
Email: [zdiane.zaini@yahoo.com](mailto:zdiane.zaini@yahoo.com)

## **1. Introduction**

The process of globalization in the financial system and the rapid advances in information technology and financial innovation has created a financial system that is highly complex, dynamic, and interconnected financial inter-sectors both in terms of products as well as institutional. In addition, the financial services institution that has ownership ties in various financial subsectors (conglomerate) has added to the complexity of the transaction and interaction among financial services institutions in the financial system.

There are many problems issues in the financial services sector, which includes acts of moral hazard, un optimal consumer protection financial services, and disruption of the stability of the financial system further encourage the need for the establishment of supervisory agencies in the financial services sector are integrated.

Supervision is required because of the potential of moral hazard (misappropriation / misuse) by economic actors that would have a negative impact on the economy. Economic theory shows that the moral hazard caused by the presence of asymmetric information. Asymmetric information is a condition where the information was not spread evenly among economic actors. Asymmetric information causes two things, namely moral hazard and adverse selection (pick error) (Hermansyah, 2013).

Practice of moral hazard in the financial sector, not only be done by financial institutions, but may also be done by the customer / household. Moral hazard occurs due to the weak system of supervision of financial institutions that are caused by several factors, among others: Weak system of supervision institutions in Indonesia; the absence of exchange of information flow (data sharing and data interfacing) among supervisory institutions of financial institutions; as well as the still high egocentric among supervisory institutions of financial institutions (Hermansyah, 2013; Papagiannis, 2014; Denisova *et al.*, 2017; Novokreshchenova *et al.*, 2016).

Bank supervision in principle are divided into two types, namely, supervision in order to encourage economic growth and maintain financial stability (macro economic supervision), and the supervision of individual banks to encourage healthy and able to preserve the interests of society with good (prudential supervision). Thus it can be understood that even if one of the purposes of bank supervision is to create and maintain a safe banking security and the interests of society, but it does not mean that the regulatory authorities should take responsibility for all of the circumstances of each bank (Sutedi, 2014; Cipovová and Dlaskova, 2016; Glavina, 2015; Carstina *et al.*, 2015).

Financial Services Authority (FSA) is a new agency established under Act Number 21 of 2011 (Act FSA). The center was established to supervise the financial services industry in an integrated manner (Thalassinos and Liapis, 2014; Thalassinos *et al.*, 2015). In accordance with the contents of Article 1 paragraph 1 of Act Number 21 of

2011 the Financial Services Authority, the FSA is an independent institution and free from interference by other parties, which has the functions, duties, and authority of regulation, supervision, inspection, and investigation as referred to in This Act. Furthermore, with the FSA, supervision of all financial services industry will be united under one roof, namely banking, capital markets, insurance, pension funds, non-bank financial institutions. Act only excludes the futures trading industry course of supervision the FSA.

FSA has a functions, duties and powers in carrying out his duties as an institution that regulates and oversees nearly the entire financial services sector in Indonesia. Article 4 of Act FSA has explained the purpose of establishing the FSA to the overall activities in the financial services sector can: Into a regular basis, fair, transparent, and accountable; able to realize financial systems grow in a sustainable and stable and capable of protecting the interests of consumers and society.

Through these objectives, the FSA is expected to support the interests of the national financial services sector so as to improve national competitiveness. In addition, the FSA should be able to safeguard national interests, among others, include human resources, management, control, and ownership in the financial services sector, taking into account the positive aspects of globalization.

## **2. Literature Review**

The understanding Banking and Bank in accordance with the provisions of Article 1 paragraph (1) and (2) of Act Number 7 of 1992 as most of the articles have been amended and supplemented by Act Number 10 of 1998 (hereinafter referred to as the Banking Law), can be explained:

1. Banking is everything that concerns about the bank, including institutional, business activities, as well as the manner and process of carrying out its business activities;
2. The Bank is an entity that collects funds from the public in the form of savings and channels them to the public in the form of credit and / or other forms in order to improve the standard of living of the people.

According to Hermansyah (2013), the bank is a financial institution that is a place for individuals, private business entities, bodies of state-owned enterprises, government agencies even to save own funds. Through the crediting activity and variety of services provided, the bank serving the needs of financing and launched the mechanism of payment systems for all sectors of the economy (Hermansyah, 2013). Laws governing the banking problems are banking law. The law is a set of laws in the form of legislation jurisprudence, doctrine, and other sources of law, which regulates banking problems as an institution, and aspects of their daily activities, signs which must be met by the bank, the behavior of officers rights, obligations, duties and responsibilities of the parties who lodged the banking

business, what should and should not be done by banks, banking existence, and others relating to the banking world (Munir Fuady, 2003). The legal nature of banking in Indonesia is imperative law or the law of force means that the bank in the operations shall be subject to and comply with the guidelines that have been implemented in the Act, if the bank signs are prohibited, however even so in the framework of internal control, banks are allowed to make internal rules (self-regulation) with reference to the general policy of Bank Indonesia (now FSA). Internal provision is intended as a clear and unequivocal standard in the internal supervision of banks, which is expected to implement its own policies and full responsibility.

In essence, regulation and supervision of banks is intended to increase the confidence of everyone who has an interest in the bank, that the banks are relatively healthy. The bank is run well and professional, as well as the bank is not contained aspects that represent a threat to the interests of people who save their money in banks.

Banking business activities are being run in a business activity that is fraught with risk (full risk business) because its activities largely rely on funds deposited by the public, either in the form of savings, current accounts or deposits. Based on Article 3 of the Banking Act Number 7 of 1992, which contains the main function of banking in Indonesia, bank is a collector and distributor of public funds. Banking business if managed properly and prudently would give considerable profit, and therefore in need of the precautionary principle (prudential banking principle).

The precautionary principle (prudential banking principle) is a principle or principles which states that the bank in carrying out the functions and their business activities shall be careful (Prudent) in order to protect the public funds entrusted to the bank. This can be seen in Article 2 of the Banking Act which states that the Indonesian Banking in the conduct of its business is based on economic democracy with the use of the precautionary principle.

The function of the implementation of the precautionary principle is none other than that the bank is always in good health, in other words to be always in a state of liquid and solvent. With the enforcement of the precautionary principle expected levels of public confidence in the banks remains high, so that people are willing and do not hesitate to save their money in banks (Zaini, 2012). For the creation of a healthy banking system, the operational activities of banking institutions also need to be based to some legal principle, namely: The principle of economic democracy; The principle of trust (fiduciary principle); The principle of confidentiality (confidential principle) and the principle of prudence (prudence principle).

Banking with all its activities in the economy can be categorized as an activity in the business world, and as one of the activities in the world of business, banking activities are not immune from the onset of the dispute which is the result of

dissatisfaction with one of the parties that are interconnected. A disputes arising in a banking activities need an effective means of dispute resolution. As a means of dispute resolution, it is very important, especially in banking activities in particular and in economic development in general.

The Act Number 23 of 1999 as the articles have been amended and supplemented by the Act Number 3 of 2004 and returned last amended by the Act Number 6 of 2009 concerning Bank Indonesia (BI here in after referred to as the Act) mandates the establishment of Oversight Institutions Sector Banking Services no later than December 31, 2010, the establishment of Oversight Institutions Sector Banking Services is an implementation of Article 34 of the Act Number 23 of 1999 and the Act Number 3 of 2004 concerning Bank Indonesia, including the transfer of supervision of Bank Indonesia's duty to the institution.

Article 1 of Act FSA describes the definition of banking that is concerns about the bank, including institutional, business activities, as well as events and processes in conducting business activities in the conventional and sharia as referred to in the Act on banking and the Banking Act Sharia.

Article 1 paragraph (1) of the Act FSA explains the meaning of the FSA as an independent institution and free from interference by other parties, which have the functions, duties, and authority of regulation, supervision, inspection, and investigation as referred to in this Act.

Article 7 of the Act FSA explains the scope of micro prudential regulatory and supervisory authority that oversees banks in Indonesia as the duty and authority of the FSA. Bank Indonesia will be more responsible in dealing with a more macro prudential, for example related to monetary policy and the handling times of crisis. From the above explanations it can be concluded that neither Bank Indonesia nor the FSA was equally in the authority, in the regulation and in supervision of banking.

To attain the function of the FSA, the FSA has various powers, both in the context of regulation and supervision of the financial services sector. The power is needed in both implementing the various provisions set out in the Act and the FSA Act in other financial services sectors, which are set out in FSA regulation or regulation the Board of Commissioners.

To carry out the task of supervision, the FSA has some authority, among others monitoring, inspection, investigation, consumer protection and other measures against financial services institutions. Pursuant to Article 4 of Act FSA, the FSA was formed with the aim that the overall activities in the financial services sector: Into a regular basis, fair, transparent, and accountable; able to realize financial systems grow in a sustainable and stable; as well as to protect the interests of consumers and society.

FSA as the watchdog agency of the financial services sector, especially the banking sector which also has the FSA Regulations commonly referred to P.OJK. FSA regulation is designed to reinforce the position of the FSA as a banking supervisory agency in the event of a dispute between the bank and the customer. This P.OJK FSA regulations or contained in the Regulation of Financial Services Authority Number 1 / P.OJK.07 / 2013 on Consumer Protection and Regulation of Financial Services Sector Financial Services Authority Number 1 / P.OJK.07 / 2014 on Alternative Dispute Resolution Institute of the Financial Services Sector.

The main hypothesis of this study is to verify: How the function of Financial Services Authority (FSA) in dispute settlement banking customers in Indonesia?

Settlements of customer complaints by banks are not always able to satisfy customers. Therefore, the settlement of disputes with the bank customers should be pursued in a simple, inexpensive, and fast through the mediation of banking. Banking Mediation is a dispute resolution process between customers and banks which was facilitated by Bank Indonesia to reach a settlement in the form of a voluntary agreement. Banking mediation dispute resolution process is cheap, fast, and simple because it is free of charge; period of the mediation process no later than 60 working days, and informal mediation process conducted as flexible. Therefore, with many disputes between customers and financial services institutions become forerunner to the birth of the FSA.

### **3. Research Model**

The approach of this study are using normative juridical to examine the rules, norms, rules, related to the aim of this study. The approach was made by way of literature study (library research), to collect a wide range of legislation, theories and literature are closely related to the matter to be examined.

The data used in this study include secondary data namely: data obtained from a literature library study. This data was obtained by studying, reading, quote and analyzing related literature, principles and theories of laws and regulations relating to the subject matter of this study. Furthermore, secondary data in this study consists of three (3) legal materials:

1. The Primary Material Law: the law is binding material in the form of regulations. In this study, the primary legal materials used are:
  - a. Act Number 7 Year of 1992 as most of the articles have been changed and added by Act Number 10 Year of 1998.
  - b. Act Number 23 Year of 1999 as amended and supplemented by Act Number 3 Year of 2004 and last amended by the release of Act Number 6 Year of 2009 concerning Bank Indonesia (BI).
  - c. Act Number 21 Year of 2011 on the Financial Services Authority (FSA)

- d. FSA Regulation Number 1 / P.OJK.07 / 2013 on Consumer Protection Financial Services Sector.
  - e. FSA Regulation Number 1 / P.OJK.07 / 2014 of the Institute of Alternative Dispute Resolution in the Financial Services Sector.
2. The Secondary Material Law is: legal material which provides an explanation of the primary legal materials such as literature and scientific papers related to research problems.
  3. The Tertiary Material Law is: legal materials which provide instructions and explanations of the primary and secondary legal materials.

### ***3.1. Procedures Data Collection and Data Processing***

#### ***3.1.1. Data Collection Procedures***

To complete the data in order to find the results of this study, the use of secondary data collection procedures performed by conducting a literature study (library research). Literature study has the purpose of obtaining the direction of thought and purpose of the research through reading, quoting, and analyzing the literature that support the legislation as well as reading materials other scientific related issues to be discussed.

#### ***3.1.2. Data Processing Procedures***

After the data is collected, the next step is to perform the data processing activities, namely activities trims data from the collection of secondary data that is ready for analysis. This activity is the selection of data by checking the completeness of the data obtained, the data classification or grouping of data systematically.

## **4. Data Analysis**

All the data either from the literature or field of studies then analyzed by juridical qualitative analysis, which describe the problem based on research and discussion in the form of an explanation or description systematically arranged, subsequently drawn conclusions to answer the research problem.

## **5. Discussion**

The dispute is a dispute between the consumer and financial services institutions in their activities of placement of funds by the consumers on financial services institution or utilization of services or products and financial services institutions after going through the process of resolving complaints by financial services institutions. The weakness of bank supervision is one of the main causes of bank mismanagement that ultimately lead to the failure of the bank (bank failure). Most cases of bank failures in Indonesia showed that the owners of the bank intervened in the operations of banks and banking crime (banking fraud) is done by the owners and management which is a major cause of bankruptcy of a bank, in addition to the impact of the financial crisis (Zaini, 2012).

The types of banking disputes are: credit card arrears, bad debts, customer contracts violated, the loss of money in the savings account, the loss of customer deposits, related information and services from the bank, system errors, flowers / fines, burglary credit or bank card, credit cards left and exploited by others, fraud involving bank employees, and blocking. The number of complaints or disputes that occur between the customer and the bank which were related to credit cards or bad credit, customer contract violated, the loss of money in the savings account, the loss of customer deposits, related information and services from the bank, an error system, interest / fines, burglary credit card, and blocking.

There are many reports to the FSA related to credit cards or bad credit is the case of dispute, this is due to a lack of understanding of customers' credit or credit card. Surely this could be a problem for the bank, because the bank in carrying out its function as a collector and distributor of funds banks must be able to protect both what customers entrusted to him by applying the precautionary principle.

In the banking dispute settlement process which is known as banking mediation. Banking mediation is a dispute resolution process between customers and banks which is facilitated by the Bank Indonesia in the dispute to reach a settlement in the form of a voluntary agreement which is now turning to the FSA as the shift of bank regulation and supervision tasks of the Bank Indonesia to the Financial Services Authority (FSA). Banking mediation dispute settlement process is cheap, fast, and simple where it is no charge; period of the mediation process no later than 60 working days, and the mediation process is informal / flexible. Banking Mediation is basically a process of negotiation between the parties to the dispute is the customer and the bank, with the involvement of a mediator from the FSA to help the disputing parties to reach a settlement in the form of a voluntary agreement to part or all of the disputed issues.

Through the mediation process, the mediator in this case the FSA has duty to direct, encourage, motivate and inspire the parties to reach an agreement. However, the mediator should be neutral and impartial in decision-making, which is expected by the parties to finally get a win-win solution where the customer's rights are protected and the reputation of the bank also maintained.

After the formation of the FSA, the banking mediation are no longer using Bank Indonesia regulation of banking mediation, but now it is done by the FSA Regulation Number 1 / P.OJK.07 / 2014 of the Institute of Alternative Dispute Resolution in the Financial Services Sector.

One of the roles of the FSA on the financial sector is the regulation and supervision of financial services in the banking sector. To carry out the task of regulation and supervision of financial services activity in the banking sector, the FSA has authority in terms of regulation and supervision of the institutional, health, as well as aspects of prudential bank. In essence, regulation and supervision of banks are intended to



increase the confidence of everyone who has an interest in the bank, that the banks are relatively healthy financial terms, the bank is run well and professional, as well as the bank is not contained aspects that represent a threat to the interests of people who save their money in banks.

Article 29 of Act FSA, FSA conduct consumer complaint services that include:

- a. Setting up the device is adequate to service consumer complaint being impaired by actors in financial services institutions.
- b. Make a consumer complaint mechanism is impaired by actors in financial services institutions.
- c. Facilitate the settlement of consumer complaints were harmed by the offender in the financial services institutions in accordance with the laws and regulations of financial services sector.

In Article 30 of Act FSA Figures (1) and (2) contains:

1. For the protection of consumers and the community, FSA is authorized to defend the law, which include:
  - a. Ordered or perform certain actions to financial services institutions to resolve consumer complaints disadvantaged financial services institutions referred to.
  - b. File a lawsuit:
    1. To reclaim the property of the injured party from the party that caused the loss, both of which are under the control of the parties which led to losses referred to or under the control of another party in bad faith.
    2. In order to obtain compensation from the party who caused the loss to consumers and financial services or institutions as a result of violations of laws and regulations of financial services sector.
2. Change the loss as referred to paragraph (1) letter b number 2 is used only for the payment of compensation to the injured party.

Article 31 of Act states that the FSA further provisions regarding the protection of consumers and the public are regulated by the FSA. In banking supervision is especially the settlement of disputes, guided by the FSA.

FSA Regulation Number 1/P.OJK.07/2013 on Consumer Protection and Regulation of Financial Services Sector Financial Services Authority Number 1/P.OJK.07/2014 on Alternative Dispute Resolution Institute at Sector Financial Services.

As described in Article 1 paragraph 3 FSA Regulation Number 1/P.OJK.07/2013 that consumer protection is consumer protection with coverage of the behavior of the financial services business.

Article 2 FSA Regulation Number 1/P.OJK.07/2013 also mentions consumer protection apply the principle: transparency; Fair treatment; Reliability; Confidentiality and security of data / information of consumers; as well as the

handling of complaints and the settlement of consumer disputes in a simple, fast, and affordable costs.

A dispute between the bank and the customer are basically completed by the bank itself, but if the process are not attain an agreement between the bank and the customer in the customer dispute resolution then the bank could use the courts or complain to the FSA, and FSA will facilitate to use one of the ways of Alternative Dispute Resolution namely mediation to resolve disputes.

In the banking dispute resolution process which is involving the FSA, the FSA position is as a mediator, where the function of the FSA is the supervisor and conduct mediation, in other words, the FSA is in the midst of or to mediate the disputing parties. It is seen in Article 2 Regulation FSA Number 1/P.OJK.07/2014 on Alternative Dispute Resolution Institute states:

1. Complaints must be settled in advance by the Institute of Financial Services.
2. In the event that no agreement is reached Complaint settlement referred to in paragraph (1) Consumer and Financial Services Institutions can perform Dispute settlement out of court or through the courts.
3. Settlement outside the court referred to in paragraph (2) conducted through the Institute of Alternative Dispute Resolution.
4. Alternative Dispute Resolution Institute referred to in paragraph (3) contained in the list of the Institute Alternative Dispute Resolution set by the FSA.
5. Settlement of Disputes through the Institute of Alternative Dispute Resolution referred to in paragraph (4) shall be confidential.

The consumer protection financial services sector aims to create a reliable system of consumer protection, increase consumer empowerment, and growing awareness of financial institutions so as to increase public confidence in the financial services sector. Consumer protection is a series of policies and implementation of activities that include education, information services, and complaints as well as the facilitation of dispute resolution for consumer financial services and public sector users of financial services.

Complaint resolution mechanisms pursued financial services sector through two (2) phases, namely the settlement of complaints made by financial services institutions (internal dispute resolution) and the settlement of disputes through the courts or institutions outside the judiciary (external dispute resolution). The internal and external settlement are:

- a. Dispute settlement conducted by financial services institutions (internal dispute resolution) is the process of dispute resolution offered by the bank to customers to resolve disputes amicably and deliberation in the case of

- dispute resolution. This means that a bank with customers are trying together to settle a dispute by way of kinship.
- b. Dispute settlement carried out outside the financial services institutions (external dispute resolution) is divided into two, namely:
    1. The process of settlement of disputes through the courts or Line Litigation is a process that is carried out by means of the legal process by conducting a lawsuit to court to resolve disputes between banks and customers.
    2. The process of dispute resolution outside the court process or Line Non Litigation is the process of resolving disputes involving third parties, namely the FSA as one of the institutions that facilitate the settlement of disputes by using one of the ways of Alternative Dispute Resolution, namely mediation with the FSA as a mediator in the settlement dispute.

It can be explained that the function of the Financial Services Authority (FSA) as an institution of banking supervisors in the banking dispute settlement. As a watchdog the FSA has a function as mediator and facilitate the customer or banking institutions to resolve disputes through Alternative Dispute Resolution Institute in order to get a win-win solution among the parties, so that neither party feels aggrieved.

Alternative Dispute Resolution Institutions also must apply the principles of accessibility, independence, fairness, and efficiency and effectiveness in any rules. Alternative Dispute Resolution institutions must have the resources to be able to carry out services and dispute settlement established by the Institute of Financial Services and coordinated by associations or organizations established by the functioning of self-regulatory organization. Then, Alternative Dispute Resolution Institute for the Banking industry, Financing, Guarantee, and Mortgage Services shall be established no later than December 31, 2015 as set forth in Article 10 paragraph 2 FSA Regulation Number 1/P.OJK07/2014.

If there is any dispute resolution institutions are not yet established the financial services industry, consumers should report to the FSA as stated in Article 11 paragraph 1 and 2 FSA Regulation Number 1/P.OJK07/2014, namely:

1. In the case of dispute resolution institutions referred to in Article 10 paragraph (2) is not established, then the consumer can apply for dispute resolution facility to the FSA.
2. Facilities disputed by the FSA as referred to in paragraph (1) shall be conducted in accordance with the provisions of the FSA regulations governing consumer protection financial services industry.

Financial services institutions that violate the provisions as defined in the FSA Rules will be penalized in the form of written warnings, fines or obligation to pay a certain

amount of money, restricted business activities, freezing of business activity, or/and revocation of permits or business activities. Further, for sanctions FSA may decide sanctions can be worn with or without preceded imposition of a written warning. As well as financial penalties FSA can impose sanctions independently or jointly with the imposition of sanctions restrictions on business activities, clotting activity and license revocation.

## **6. Conclusion And Suggestion**

### **6.1. Conclusion**

Based on the results of the study and discussion it can be concluded as follows: As the banking supervisory agency in Indonesia FSA also has a function for the banking dispute resolution. FSA is a function of the supervisor and mediation, or in other words, the FSA is in the midst of or to mediate the conflicting parties in mediation banking. With the banking mediation by the FSA is expected to unavailability of service mechanism financial services sector disputes through alternative dispute resolution institutions that apply the principles of accessibility, independence, fairness, and efficiency and effectiveness, a series of consumer protection system in order to boost consumer confidence to financial services institutions and a positive impact on the development of the financial services industry in creating a financial system that grows in a sustainable and stable.

### **6.2. Suggestion**

As a suggestion in this research we can conclude as follows: Every banking institution in Indonesia should be based on the Financial Services Authority Regulation Number 1/P.OJK.07/2014 on the Alternative Dispute Settlement Institution, by immediately providing the Alternative Dispute Settlement Institution for the respective bank's customers, so as to provide a sense of security, increase customer confidence and provide legal certainty if customers experience a dispute with the bank.

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