

Mediasi perbankan sebagai media penyelesaian sengketa antara bank dan nasabah = Banking mediation is a form of alternative dispute resolution between the bank and the customers

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Abstrak

[ABSTRAK

Sektor perbankan memiliki posisi yang strategis sebagai lembaga intermediasi. Dalam menjalankan kegiatannya bank membutuhkan kepercayaan serta dukungan dari masyarakat. Oleh karenanya sudah seharusnya bank memberikan perlindungan hukum terhadap hak-hak masyarakat khususnya hak nasabah. Bank sebagai suatu lembaga yang menghimpun dan menyalurkan dana masyarakat dapat menimbulkan suatu hubungan hukum yang berpotensi mengakibatkan terjadinya sengketa antara nasabah dan bank. Salah satu bentuk perlindungan hukum yang dikeluarkan oleh Bank Indonesia adalah Peraturan Bank Indonesia (PBI) Nomor 8/5/PBI/2006 tentang Mediasi Perbankan, yang dirubah dengan PBI Nomor 10/1/PBI/2008 tentang Perubahan Atas Peraturan Bank Indonesia Nomor 8/5/PBI/2006 tentang Mediasi Perbankan. Mediasi perbankan merupakan alternatif penyelesaian sengketa untuk menyelesaikan sengketa yang terjadi antara nasabah dengan bank. Penelitian ini dilatarbelakangi oleh sejumlah pertanyaan yakni: Bagaimana perlindungan hukum terhadap hak-hak nasabah dalam mediasi perbankan? Apa manfaat mediasi perbankan sebagai alternatif penyelesaian sengketa dalam penyelesaian sengketa perbankan? Dan bagaimana independensi dari Lembaga Mediasi Perbankan serta kekuatan hukum dari suatu akta kesepakatan yang dihasilkan dari proses mediasi?

Untuk meneliti hal-hal tersebut di atas digunakan metode yuridis normatif dengan pendekatan yang bersifat kumulatif. Pengumpulan data dilakukan melalui studi kepustakaan guna memperoleh bahan hukum primer dan sekunder.

Hasil penelitian menunjukkan bahwa Pertama, mediasi perbankan merupakan regulasi yang dikeluarkan oleh Bank Indonesia dalam menjalankan fungsi pengawasan. Perlindungan hukum terhadap hak-hak nasabah menurut hukum positif harus dilakukan melalui peraturan perundang-undangan yang terdapat dalam hierarki perundang-undangan. Oleh karena itu peraturan mengenai mediasi perbankan ini memerlukan penyempurnaan yang lebih komprehensif. Kedua, manfaat mediasi perbankan dalam menyelesaikan sengketa antara nasabah dengan bank adalah dalam rangka meningkatkan kepercayaan masyarakat terhadap bank karena dengan berlarut-larutnya sengketa antara nasabah dengan bank dapat menurunkan citra bank. Sedangkan bagi nasabah mediasi perbankan merupakan salah satu aturan hukum untuk melindungi hak-hak nasabah terutama nasabah kecil dan usaha mikro dan kecil karena penyelesaian sengketa dapat ditempuh secara sederhana, murah, dan cepat. Ketiga, sebagai suatu Lembaga Mediasi Perbankan (LMP) harus independen sehingga bebas dari pengaruh dan intervensi dari Bank Indonesia. Sehingga dalam menjalankan tugasnya lembaga ini dengan benar-benar netral. Kekuatan hukum dari akta kesepakatan yang dihasilkan dari proses mediasi perbankan adalah mengikat para pihak yang membuatnya yakni nasabah dan bank. Akta ini harus didaftarkan dalam jangka waktu 30 (tiga puluh) hari di Pengadilan Negeri. Melalui pendaftaran ini

maka akta mediasi perbankan mempunyai kekuatan hukum layaknya putusan yang telah berkekuatan hukum tetap. Penelitian ini menyarankan agar LMP yang akan dibentuk oleh asosiasi perbankan tidak hanya terdiri dari kalangan perbankan saja, tetapi ikut juga memasukkan unsur-unsur lain seperti akademisi dan praktisi. Dan sebaiknya LMP independen ini tidak hanya melayani nasabah yang dirugikan oleh bank, tetapi juga melayani bank yang kemungkinan dirugikan oleh nasabahnya sehingga dapat menciptakan harmonisasi bilateral aturan keduanya.

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ABSTRACT

Banking sector has a strategic position as an institute of intermediation. In carrying out its activity, a bank needs the trust and support from the community. Therefore, a bank should have given a protection to the rights of community especially the rights of consumers. As an institution raising and distributing community's funds, a bank can create a legal relationship which is potential in causing a dispute between the customers and the bank. One of the legal protections produced by Bank of Indonesia is a regulation of bank of Indonesia (PBI) number 8/5/PBI2006 about banking mediation, which is changed by PBI Number 10/1/PBI/2008 about the amendment of bank of Indonesia Regulation number 8/5/PBI/2006 about banking mediation. Banking mediation is an alternative dispute resolution to solve any dispute existing between the customers and the bank. This study was initiated by a number of questions such as how legal protection of banking mediation to the rights of bank customers, what are the advantages of banking mediation as an alternative dispute resolution in solving the banking dispute, how is the independency of banking mediation institution, and how is the legal power of an act of agreement which is produced by the mediation processes.

Due to the objectives which is mentioned above, this research used the method of normative legal research with qualitative approach. The instrument for collecting the data is known as library research which uses primary and secondary data.

The result of study shows that, first, banking mediation is a regulation issued by Bank of Indonesia in the implementation of its function of control. Legal protection toward the rights of customers in a legal positive way must be implemented based on the regulation on this banking mediation needs a more comprehensive finishing touch: second, the advantage of banking mediation as an alternative dispute resolution is solving the dispute between the customers and the bank is to improve the public trust in order to manage the bank reputation risk. To the customers, banking mediation is one of the legal regulations to protect the rights of the customer especially small customers and small and micro business for the dispute solution can be done by simply, cheaply and accurately: third, the Banking Mediation Institution must be independent that makes it free from the influence of intervention of Bank of Indonesia that, in performing its duty, this institution must be neutral selection. The legal power of the act of agreement that is produced by the banking mediation process binds the parties which made it such as the customers and the bank. This act must be registered in 30 (thirty) days in the court of the first instance. Through this study, it is suggested that the Banking Mediation Institution will be established by banking association which not only consist of banking community but also the other elements such as academics and practitioners. The independent Banking Mediation Institution not only serve the customers inflicted financial loss by the bank but also the bank which might be inflicted financial loss by its customers that the institution can create a bilateral harmony between the two of them ;Banking sector has a strategic position as an institute of intermediation. In carrying out its activity, a bank

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