

Mediasi Melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK): Suatu Upaya untuk Melindungi Kepercayaan Nasabah Terhadap Bank = Mediation Through Alternative Financial Services Sector Dispute Resolution Institutions (LAPS SJK): An Effort to Protect Customer Trust in Banks

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Abstrak

Asas yang melandasi hubungan hukum antara bank dan nasabah adalah hubungan kepercayaan (fiduciary relationship). Kewajiban yang berlandaskan Asas Kepercayaan dapat timbul karena adanya hubungan hukum di antara bank dan nasabahnya. Bank dapat digugat atau dilaporkan apabila ia merugikan nasabahnya karena melakukan unsafe dan unsound practices sehingga melanggar kewajiban yang dipercayakan kepadanya. Sengketa yang disebabkan oleh pengaduan nasabah di sektor jasa keuangan terhadap bank tidak selalu dapat menghasilkan kesepakatan maupun penyelesaian secara sederhana, cepat, dan dengan biaya ringan. Oleh karena itu, untuk memenuhi kebutuhan nasabah di sektor jasa keuangan atas penyelesaian sengketa di luar pengadilan, maka Otoritas Jasa Keuangan membentuk Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan ("LAPS SJK"). Dalam penelitian ini, Penulis hendak: (1) menganalisis bagaimana Asas Kepercayaan dalam hukum perbankan dapat menjamin perlindungan terhadap hak-hak nasabah; dan (2) mengkaji pengaturan pelaksanaan mediasi sebagai salah satu alternatif penyelesaian sengketa perbankan di LAPS SJK sesuai dengan Asas Kepercayaan dalam hukum perbankan. Hasil penelitian menunjukkan bahwa hukum perbankan Indonesia ternyata belum mengatur secara spesifik mengenai penerapan Asas Kepercayaan oleh bank yang mengemban status sebagai penasihat transaksional sehingga hak-hak nasabah investor belum mendapatkan perlindungan hukum yang memadai. Selain itu, peraturan pelaksanaan mediasi, baik dalam bentuk Peraturan OJK maupun Peraturan LAPS SJK belum mengakomodir kebutuhan para pihak untuk menentukan jumlah ganti rugi yang wajib dibayar oleh pihak yang melanggar perjanjian mediasi. Dengan diakomodirnya kebutuhan tersebut, maka diharapkan tingkat kepercayaan nasabah terhadap perbankan dan LAPS SJK akan semakin meningkat.

.....The principle underlying the legal relationship between banks and customers is a relationship of trust (fiduciary relationship). Obligations based on the Principle of Trust can arise because of the legal relationship between the bank and its customers. A bank can be sued or reported if it harms its customers because it carries out unsafe and unsound practices thereby violating the obligations entrusted to it. Disputes caused by complaints from customers in the financial services sector against banks do not always result in agreements or resolutions that are simple, fast and at low cost. Therefore, to meet the needs of customers in the financial services sector for dispute resolution outside of court, the Financial Services Authority established an Alternative Institution for Dispute Resolution in the Financial Services Sector ("LAPS SJK"). In this research, the author wants to: (1) analyze how the Principle of Trust in banking law can guarantee the protection of customer rights; and (2) reviewing the arrangements for implementing mediation as an alternative for resolving banking disputes at LAPS SJK in accordance with the Principles of Trust in banking law. The research results show that Indonesian banking law does not yet specifically regulate the application of the Principle of Trust by banks that hold the status as transactional advisors so that the rights

of investor customers do not receive adequate legal protection. In addition, the regulations for implementing mediation, both in the form of OJK Regulations and LAPS SJK Regulations, do not accommodate the needs of the parties to determine the amount of compensation that must be paid by the party who violates the mediation agreement. By accommodating these needs, it is hoped that the level of customer trust in banking and LAPS SJK will increase.