



Juridical Analysis of Fintech Business Dispute Settlement Through Online Dispute Resolution (ODR)

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Abstract

The research used in this research process uses type of normative legal research. Online Dispute Resolution (ODR) as an alternative dispute resolution in fintech sector has an urgency to be constructed immediately. First, the philosophical basis states that state supports existence of increasingly developing technologies if they are considered good and bring benefits to society. Second, the sociological basis due for rapid growth of fintech is directly proportional to various legal issues related to fintech disputes. Third, the juridical basis is because regulations related to fintech and Alternative Dispute Resolution (APS) are deemed no longer in accordance with legal developments and community needs, so that stricter regulations are needed and in accordance with legal developments and community needs. The government, the Financial Services Authority, Bank Indonesia and other relevant regulators should pay attention to need to accommodate ODR as an alternative to fintech dispute resolution in various laws and regulations in Indonesia so that there is no legal vacuum (*rechtvacuum*) and to optimize the basic principles of consumers, namely for efficiency and effectiveness in fintech sector.

Keywords: *Juridical; ODR; Fintech*

Introduction

The fintech industry in Indonesia is growing very rapidly, this is indicated by growing number of startups in *fintech* sector. Even in payment system, it can now be done via internet using an electronic wallet application which is considered easier and more practical than payment systems with *cash, cards*, and so on. In 2021 internet users in Indonesia will increase by 11% from the previous year, from 175.4 million to 202.6 million users. Indonesia's internet penetration at the end of March 2021 was 76.8% of the total population. According to data Internet world (*Asia Internet Stats by Country and 2022 Population Statistics*, n.d.), internet users in country reached 212.3million with an estimated total population of 278.2 million. Indonesia's position is above Asian penetration average of 63.9% a population of 4.3 billion people and also above the world average of 65.7% of estimated total population of 7.86 billion

people. (Penetrasi Internet Indonesia Peringkat 7 Di Asia Tenggara / Databoks, n.d.) Along with the increasing preference for online shopping, indicating that people's attitudes have begun to change, people have begun to move to make transactions *online*.

Behind this number, the potential for *e-commerce* disputes is quite large. It is estimated that about 3-5% of *e-commerce* transactions end in dispute. For web pages or applications that don't have a feedback and rating system that allows consumers to *review* before making a purchase, the percentage of disputes is expected to be even higher. Consumers' anticipation of protecting themselves from rogue business actors is a necessity, especially since transactions are cross-border, multi-jurisdictional, and the value is not too large. The issue of fast, efficient, and inexpensive dispute resolution is an important consideration.

Online settlement is expected to be one of preventive ways in resolving *Fintech* business disputes. To know some needs of these *fintech* business players, *Online Dispute Resolution* (ODR) can be a promising offer as an alternative form of handling *fintech* business dispute resolution. ODR is a form of implementation of *ADR* (*Alternative Dispute Resolution*) by utilizing development of the information world. (Aziz & Hidayah, 2020) Basically the ODR system are same as *ADR* where *ADR* has 3 (three) dispute resolution methods, namely negotiation, mediation and arbitration. The difference between ODR and *ADR* lies in dispute resolution implementation system. The implementation of ODR is carried out *online* using electronic equipment that is connected to internet network so that there is no need for face-to-face business dispute resolution meetings.

Indonesia actually has several regulations that support ODR, namely Law No.19 of 2016 concerning amendments to Law no.11 of 2008 concerning Information and Electronic Transactions, Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Law no. 7 of 2014 concerning Trade, Law no. 8 of 1999 concerning Consumer Protection, PP No. 71 of 2019 concerning Implementation of Electronic Systems and Transactions, PP No. 80 of 2019 concerning Trading Through Electronic Systems (PMSE), and several Financial Services Authority (OJK) regulations. ODR has challenges because there are institutions that have authority to settle disputes. For example, dispute resolution in the financial and trade sectors has different authorities. (Setiyawan et al., 2020)

There is an Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK) as an alternative for dispute resolution outside the general court. Since 2021, dispute resolution through of financial services sector LAPS which was previously carried out by BAPMI, BMAI, BMDP, LAPSPI, BAMPPI and BAMPPVI has been merged into LAPS-SJK. Thus, dispute resolution will be faster because it has been centralized considering the increasing number of *hybrid* financial products. The legal basis to SJK LAPS is regulated in POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions for the Financial Services Sector. (2021, *Penyelesaian Sengketa Jasa Keuangan via LAPS Dilakukan Secara Terintegrasi - Finansial Bisnis.Com*, n.d.)

Based on description above, it is interesting to conduct normative research to further examine urgency of *Online Dispute Resolution* as a legal protection effort for *fintech* users in Indonesia to become an alternative, professional, credible institution, create justice and facilitate the settlement of disputes in financial services sector.

Research Method

The research used in this research process uses type of normative legal research. (Michael & Boerhan, 2020)

Research Results and Discussion

The creation of a healthy *fintech* industry is directly proportional to protection of its users, because the bigger and stronger the *fintech* activities that can be carried out anytime and anywhere, the potential for disputes is also getting bigger. Development of information and communication technology also has an influence on development of non-litigation settlement or alternative dispute resolution which is felt to make it easier for both business actors and *fintech* consumers themselves. However, APS (Alternative Dispute Resolution) is deemed less effective and efficient because it has to be face-to-face, while *fintech* can be done by anyone and anywhere using the internet and web-based in various ways. ODR are implementation of APS using information and communication technology that is increasingly developing as the definition of ODR, uses of information and communication technology to help parties manage, change and resolve their conflicts. (NOTE OF CONFERENCE Held by the Centre for Socio-Legal Studies, Oxford on 28 October 2011 Sponsored by Swiss Re and the Foundation for Law Justice & Society THE HIDDEN WORLD OF CONSUMER ADR: REDRESS and BEHAVIOUR I. Models of ADR: The Research Findings-Revealing the Hidden World of Consumer ADR In, n.d.)

Currently there are 4 (four) types of ODR systems, namely: a. *Online settlement*: using a special system to automatically settle financial claims; b. *Online arbitration*: using the website to resolve disputes with help of a competent arbitrator; c. *Online resolution of consumer complaints*: using email to handle certain types of complaints from consumers; d. *online mediation*. (Daly et al., n.d.)

To optimize the role of *fintech* in society, it must be ensured that *fintech* consumers receive adequate protection, justice in the economy or society, and efficient dispute resolution and achieve a balance between the convenience and flexibility of services that have been offered by *fintech*. Efforts that can be made to increase *fintech* consumer protection are (Saragi, 2014) a. Firmer supervision and regulation and a focus on *fintechs* that have developed and are being used; b. Improved coordination with relevant regulators; c. Introductions for the preparation of *fintech* and dispute resolution mechanisms; d. Increasing the legitimacy of *fintech* and its dispute resolution mechanism. This is expected to be done by relevant regulators to increase public and consumer confidence about *fintech* products/services in order to mitigate potential risks that exist. In Indonesia, there are still many regulations governing *fintech*, but the settlement still uses traditional settlements, namely litigation or court proceedings. The litigation path or court route has its drawbacks, namely the submission process to court takes a long time with unstable results, in a long time it also requires no small amount of money, it is required to meet both parties, judges who don't necessarily have experience with disputes, and with results of a *win-lose solution*.

In Indonesia, the perspective on ODR that appears is not much different, namely that ODR is a tool or *supporting technology* for the implementation of dispute resolution which is based on rules, procedures and procedures that have been determined. The use of *e-court* system in courts and use of electronic facilities at ADR institutions such as BANI and BAPMI are examples of ODR implementation from perspective of *supporting technology*. Especially for BAPMI, dispute resolution via this institution has now been merged into the Financial Services Sector LAPS which also uses technology and communication facilities in resolving consumer disputes and the financial services sector.

The implementation of ODR in Indonesia as a *fintech* business dispute resolution system is further strengthened by issuance of Financial Services Authority Regulation No. 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions (hereinafter referred to as POJK LAPS SJK) by Financial Services Authority (OJK) as an integrated regulator and supervisor of all activities of Financial Services Industry. The settlement of *fintech* business disputes with ODR system is stated in Article 33 paragraph (1) letter b POJK LAPS SJK, which in process of resolving disputes through Financial Services Sector Institution (LAPS SJK) can be done using electronic media. The electronic media is a long-distance communication medium that allows parties involved in *fintech* business dispute resolution to

hear or see and hear, such as use of *web conferences*, *video conferences*, and *audio conferences*. From these regulations it is clear that ODR dispute resolution in Indonesia can already be implemented to handle disputes in the financial services industry considering public's need for dispute resolution in the financial services sector in future will increase and there will be advantages that will make it easier for parties to use system. ODR compared to regular dispute resolution.

As regulated in Article 4 POJK LAPS SJK, LAPS SJK has several duties and authorities, namely:
a. Carry out handling and settlement of consumer disputes; b. Provide consultation on dispute resolution in financial services sector; c. Conduct research and development of dispute resolution services in financial services sector; d. Making regulations in context of dispute resolution in financial services sector; e. Cooperating with consumer protection institutions/agencies both nationally and internationally; and f. Develop competence of mediators and arbitrators registered with Financial Services Sector LAPS.

In Indonesia, issues that need attention in regulation and implementation of ODR in future are (Gerarita Sitompul et al., 2016) a. Scattered and incomplete ODR arrangements; b. Awareness of presence of ODR; c. Accessibility and literacy; d. Infrastructure; and e. Capacity development. In terms of scattered and incomplete arrangements, ODR is only mentioned in ITE Law and PP *E-Commerce*. The settlement is carried out referring to the applicable laws and regulations, both in the Consumer Protection Law, the Ordinary Civil Procedure Law, and the AAPS Law (Arbitration and Alternative Dispute Resolution). However, there is no further regulation regarding ODR. Therefore, there needs to be a regulation regarding ODR so that LAPS-SJK can provide services for resolving differences in opinion through provision of (*binding opinions*), not only resolving disputes between consumers and Financial Services Providers (PUJK), but also between PUJK and consumers, PUJK with PUJK, and other parties involved in a dispute arising from agreements in financial services sector, as well as developing become competence of mediators and arbitrators registered with LAPS-SJK.

The security aspect of electronic system in ODR must be a major concern in implementation of *fintech* business dispute resolution. One of efforts that can be taken to improve the security of ODR services is to have an Information Security Management System certification issued by Certification Body as stipulated in Article 10 is Regulation Minister of Communication and Information Technology No.4 of 2016 concerning Information Security Management System. (*Lembaga Alternatif Penyelesaian Sengketa / Saragih / Jurnal Hukum & Pembangunan*, n.d.) ODR dispute resolution service providers must be supported by placing data on electronic data centers and disaster recovery centers in order to strengthen supervision in use of data on electronic systems used in ODR services as a form of integrated risk management.

Conclusion

Online Dispute Resolution (ODR) as an alternative dispute resolution in *fintech* sector has an urgency to be constructed immediately. First, the philosophical basis states that state supports existence of increasingly developing technologies if they are considered good and bring benefits to society. Second, the sociological basis due for rapid growth of *fintech* is directly proportional to various legal issues related to *fintech* disputes. Third, the juridical basis is because regulations related to *fintech* and Alternative Dispute Resolution (APS) are deemed no longer in accordance with legal developments and community needs, so that stricter regulations are needed and in accordance with legal developments and community needs. The government, the Financial Services Authority, Bank Indonesia and other relevant regulators should pay attention to need to accommodate ODR as an alternative to *fintech* dispute resolution in various laws and regulations in Indonesia so that there is no legal vacuum (*rechtvacuum*) and to optimize the basic principles of consumers, namely for efficiency and effectiveness in *fintech* sector.

References

- 2021, *Penyelesaian Sengketa Jasa Keuangan via LAPS Dilakukan Secara Terintegrasi - Finansial Bisnis.com*. (n.d.). Retrieved June 6, 2022, from <https://finansial.bisnis.com/read/20201127/90/1323591/2021-penyelesaian-sengketa-jasa-keuangan-via-laps-dilakukan-secara-terintegrasi>
- Asia Internet Stats by Country and 2022 Population Statistics*. (n.d.). Retrieved June 6, 2022, from <https://www.internetworldstats.com/asia.htm>
- Aziz, M. F., & Hidayah, M. A. (2020). PERLUNYA PENGATURAN KHUSUS ONLINE DISPUTE RESOLUTION (ODR) DI INDONESIA UNTUK FASILITASI PENYELESAIAN SENGKETA E-COMMERCE. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 9(2). <https://doi.org/10.33331/rechtsvinding.v9i2.449>
- Daly, P., Gelinus-Faucher, B., Seijas, R., Warchuk, P., Allan, A., Brown, E., Anderson, J., Hannan, L., Humphrey, J., & Pham, L. (n.d.). *Cambridge Pro Bono Project 2 Contributors Faculty Cambridge Pro Bono Project-Executive Directors Student Coordinators Student Researchers*.
- Gerarita Sitompul, M., Syaifuddin, M., & Yahanan, A. (2016). Online Dispute Resolution (Odr): Prospek Penyelesaian Sengketa E-Commerce Di Indonesia. *Jurnal Renaissance*, 1(2).
- Lembaga Alternatif Penyelesaian Sengketa | Saragih | Jurnal Hukum & Pembangunan*. (n.d.). Retrieved June 6, 2022, from <http://jhp.ui.ac.id/index.php/home/article/view/564>
- Michael, T., & Boerhan, S. (2020). NEGARA DAN EKSISTENSINYA DALAM PRIVASI SUBJEK HUKUM. *Jurnal Hukum Magnum Opus*, 3(2). <https://doi.org/10.30996/jhmo.v3i2.3414>
- NOTE OF CONFERENCE held by the Centre for Socio-Legal Studies, Oxford on 28 October 2011 sponsored by Swiss Re and the Foundation for Law Justice & Society THE HIDDEN WORLD OF CONSUMER ADR: REDRESS and BEHAVIOUR I. Models of ADR: The Research Findings-Revealing the Hidden World of Consumer ADR in*. (n.d.). Retrieved June 6, 2022, from http://ec.europa.eu/consumers/redress_cons/index_en.htm
- Penetrasi Internet Indonesia Peringkat 7 di Asia Tenggara | Databoks*. (n.d.). Retrieved June 6, 2022, from <https://databoks.katadata.co.id/datapublish/2021/10/13/penetrasi-internet-indonesia-peringkat-7-di-asia-tenggara>
- Saragi, M. (2014). Litigasi Dan Non Litigasi Untuk Penyelesaian Sengketa Bisnis Dalam Rangka Pengembangan Investasi Di Indonesia. *E-Journal Graduate Unpar Part B: Legal Science E-Journal Graduate Unpar Part B: Legal Science*, 1(2).
- Setiyawan, W. B. M., Churniawan, E., & Rudatyo, R. (2020). ONLINE DISPUTE RESOLUTION SEBAGAI MODEL PERLINDUNGAN HUKUM PELAKU BISNIS. *Rechtidee*, 15(1). <https://doi.org/10.21107/ri.v15i1.7703>

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