

SETTLEMENT OF BANKING DISPUTE IN INDONESIA

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Abstract

This article talks about dispute between costumer and the bank. Settlement of disputes should be resolved by the principle of fast, accurate and cheap. Issues raised in this paper is how an ideal dispute resolution process to resolve dispute banking. This paper describes the advantages and disadvantages in any dispute resolution process both through litigation and non litigation. Based in the principles of fast, accurate and cheap it is explained that banks in Indonesia must resolve their disputes through non litigation or ADR.

Keywords: *disputes, ADR, banks.*

Intisari

Tulisan ini membicarakan mengenai penyelesaian sengketa antara nasabah dengan bank. Penyelesaian sengketa harusnya diselesaikan dengan prinsip cepat, tepat dan murah. Permasalahan yang diangkat dalam tulisan ini yaitu bagaimana proses penyelesaian sengketa yang ideal dalam menyelesaikan sengketa perbankan. Tulisan ini menggambarkan mengenai kelebihan dan kekurangan dalam setiap proses penyelesaian sengketa baik melalui jalur litigasi maupun non litigasi. Berdasarkan prinsip cepat, tepat dan murah maka dipaparkan bahwa perbankan di Indonesia harus menyelesaikan sengketanya melalui jalur non litigasi atau ADR.

Kata Kunci: sengketa, ADR, bank.

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A. Introduction

Banking is one of the pillars in Indonesia's economic development. The emergence on the law of banking began since the ratification of Law Number 14 of 1967 on Banking and was later replaced by Law Number 7 of 1992 and was changed again to Law Number 10 of 1998 on Amendment of Law Number 7 of 1992 on Banking (the Law of Banking). Article 1(2) on the Law of Banking stipulates that a Bank is a corporate entity mobilizing funds from the public in the forms of Deposits and channeling them to the public in the forms of Credit and/or other forms in order to improve the living standards of the common people. The main activity of a bank must be held in accordance with the existing laws on banking, especially the Law of Banking.

As a corporate entity, the presence of a bank in the society has a very strategic role in the process of national development; this is because banking has an important role in national economy.¹ The meaning and the role of banking is seen from the definition of the bank itself, that is as a corporate entity which accumulate funds from community in the form of loan or other forms in order to accrue the standard of living of the people.² Based on that definition, it can be seen that the main role of banking is as a media to collect funds from the community and distribute it effectively and efficiently to real sector for powering development and stability of economy in a country.

The activity of banking business to accumulate funds from community is based on the principle of trust. The principle of trust from customer to bank is the main factor of activity of banking business in running its business. People who trust bank as place to save their money will give positive impact to the development of banking business in order to

advance the economy of Indonesia. The existence of principle of trust from the community to the bank will stimulate community to save their funds in bank. Therefore, bank holds very big reputation risk where bank must maintain the level of trust from its customer or people.

Bank in running its business of course has problem. This problem can be problem between banks or bank with its customer. This paper will focus on the problem of bank with its customer. Problem of bank with its customer will be called dispute between customer and the bank. The dispute between customer and the bank can be caused by a few things, they are:³

- a. The lack of information about the characteristics of product or service offered by bank;
- b. The lack of customer understanding about the activity and product or banking service;
- c. The imbalance of the relationship between customer and the bank;
- d. No proper channel to facilitate the settlement of early dispute between the customer and the bank.

Dispute between the customer and the bank must be settled with processes according to the law. The settlement of dispute, basically, can be done through 2 (two) ways, they are through litigation and non litigation. The settlement of dispute through litigation is through the process in the court. This process is to get legal certainty based on the court's decision. Non litigation is process out of the court which based on principle of kinship. Until now there are a lot of banking dispute which is done through litigation. The settlement through this way has a lot of weaknesses. This is can be seen that nowadays the settlement of dispute through litigation gets a lot of sharp criticism from practitioners and academics. Those criticisms is seen from the role and function of court which is

¹ Burhanuddin Abdullah, 2006, *Jalan Menuju Stabilitas Mencapai Pembangunan Ekonomi Berkelanjutan*, Pustaka LP3ES Indonesia, Jakarta, p. 23.

² Article 1 Number (2) Act Number 10 of 1998 on the Amendment of Act Number 7 of 1992 on Banking (State Gazette of the Republic of Indonesia Number 182 of 1998, Supplement to State Gazette of the Republic of Indonesia Number 3790).

³ Muliaman D. Hadad, "Perlindungan dan Pemberdayaan Nasabah Bank dalam Arsitektur Perbankan Indonesia", *Makalah*, Discussion held by National Consumer Protection Agency, Jakarta, 16 June, 2006.

thought to have overload burden, slow and waste of time, very expensive cost, and unresponsive to public interest or is thought over formalistic and over technical.⁴

The weaknesses expressed by practitioners and academics aforementioned make a lot of people try to find other alternatives in settling dispute out of judicial institutions.⁵ Law number 30 of 1999 about Arbitration and Alternative Dispute Settlement (Law of Arbitration) which was enacted on 23 September 1999 gives chances to settle disputes outside of judicial institution. The importance of dispute settlement though the way out of court gives boost to the regulator to make rules about dispute settlement especially banking dispute through the way out of court. Based on the aforementioned background, the problem formulated in this paper is: how is the ideal form of dispute settlement between customer and bank in settling banking dispute?

B. Discussion

Bank is derived from Italian word, *banco*, which means bench. Bank is included in services industry company because its products only give services to community.⁶ According to G.M. Velyn Stuart, bank is defined as an institution which has purpose to satisfy the needs of credit, using its own medium of exchange or with money it gets from other or by circulating new medium of exchange such as demand deposits.⁷ Based on the idea presented by G.M. Velyn Stuart, then the definition of bank can be summarized as financial institution in the form of business entities which accumulates funds from community in the form of saving which then those saving is distributed again to the community who need it in the form of credit.

Article 1 number 1 the Law of Banking states that banking is everything which concerns about bank, covering institutional, business activities, and also the way and process in doing its business activities. Meanwhile the definition of bank can be seen in Article 1 number (2) the Law of Banking which states that bank is business entities which accumulate funds from community in the form of saving and distribute it to community in the form of credit and or other forms in order to increase the standard of living of community.

Article 1 (2) the Law of Banking states that Banking has main function as financial intermediation or as financial intermediary; also has additional function that is to give other services in payment traffic. According to Iswantoro, Bank has the function as follows:⁸

- a. To accumulate idle funds to be loaned to other people or to buy securities (Financial Investment);
- b. To ease in the payment traffic;
- c. To guarantee the community idle fund;
- d. To create Credit (Credit Money deposit) that is by creating Demand.

Deposit (Deposit which can be cashed at anytime from excess reserves) Bank has particular mission and function other than function that has been mentioned before; bank has function as the agent of development, which is as institution which aims to implement national development in order to increase equitable developments and their results, national growth, and national stability, to increase the standard of living of community.⁹

National banking has function as the means of community empowerment and all of the strength of the national economy, especially small and medium entrepreneurs and cooperative. Nyoman Moena translate those commitments in banking language, then the function of banking

⁴ Garry Goodpaster, 1995, *Tinjauan terhadap Penyelesaian Sengketa: Seri Dasar-Dasar Hukum Ekonomi Arbitrase di Indonesia*, Ghalia Indonesia, Jakarta, p. 6.

⁵ M. Yahya Harahap, 1997, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*, Sinar Grafika, Jakarta, p. 248.

⁶ H. Malayu S.P. Hasibuan, 2009, *Dasar-Dasar Perbankan*, Bumi Aksara, Jakarta, p. 1.

⁷ Melayu Hasibuan, 2001, *Dasar-dasar Perbankan*, Bumi Aksara, Bandung, p. 2.

⁸ Iswardono, 1990, *Uang dan Bank*, BPFE, Yogyakarta, p. 62.

⁹ Article 4 Act Number 10 of 1998 on the Amendment of Act Number 7 of 1992 on Banking (State Gazette of the Republic of Indonesia Number 182 of 1998, Supplement to State Gazette Republic of Indonesia Number 3790).

as:¹⁰ (1) institution of confidence; (2) institution of encouragement of economic growth; dan (3) institution of equity.

If it is translated to the form of responsibility, the forms of responsibility of banking are:¹¹ (1) prudential responsibility (bank must be healthy); (2) commercial responsibility (bank must profit); (3) financial responsibility (bank must be transparent); and (4) social responsibility (the ability to accommodate the wish of stake holders fairly).

Basically the settlement of dispute is divided into two. They are: though the litigation in the court; and though the settlement out of court.¹² The differences of the two types of settlement can be differentiated by the difference of time, the result and the cost incurred by both sides. Litigation process results in adversarial agreement which is not yet able to give settlement based on the importance of common interest, has tendency to make new problem, slow settlement, expensive cost, unresponsive and can cause hostility between the two sides.¹³ On the contrary, the settlement of dispute out of court results in the win-win solution agreement, guaranteed confidentiality, quick process, the settlement is done in a good faith, therefore there is no hostility caused between the two sides.¹⁴

Gary Goodpaster states that every member of community has various ways to get agreement in proceedings or to settle dispute and conflicts. Ways used in a certain dispute has consequences, either to the sides which disputes or to community in the broadest sense. Because of the consequences, therefore it is vital to channel the dispute to the most appropriate mechanism of settlement of dispute for them.¹⁵ Banking in Indonesia of

course does not miss from dispute. The dispute in question is the dispute happened between the bank and its customer. The dispute which happened between the customer and the bank usually is about discrepancies between the deal and the fact. Various disputes between the bank and the customer do not have to be settled in the Court. Law Number 30 of 1999 about Arbitrary and Alternative Dispute Settlement is one of the government's product with Republic of Indonesia's House of Representative in giving solution to settle disputes happened in Indonesia. The term dispute settlement is translation from English term, which is Alternative Dispute Resolution (ADR). ADR is options in settling quarrel and dispute without the court through lawful means; either through consensus approach or not.¹⁶

Philip D. Bowstick in *Going Private With the Judicial System* (1995) defined ADR as "a set of practise and legal techniques that aims:¹⁷ (a) To permit legal dispute to be resolved outside the courts for the benefit of all disputants; (b) To reduce the cost of conventional litigation and the delay to which it is ordinarily subjected; (c) To prevent legal dispute that would otherwise likely be brought to the courts. Different with Philip D. Bowstick, Christopher W. Moore states a number of advantages of settling a dispute with ADR, they are:¹⁸

- a. Voluntary nature in the process, where both sides choose settling of the dispute is done out of court;
- b. Quick procedure; this is because ADR process is less formal;
- c. Non judicial conclusion; the conclusion is taken based on the decision of the two sides, where there is no third party to take the conclusion;
- d. Control by the manager which know the

¹⁰ Neni Sri Imaniyati, 2010, *Pengantar Hukum Perbankan Indonesia*, Refika Aditama, Jakarta, p. 15.

¹¹ *Ibid.*

¹² Rachmadi Usman, 2003, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Citra Aditya Bakti, Bandung, p. 3

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Gunawan Widjaya and Ahmad Yani, 2000, *Hukum Arbitrase*, Raja Grafindo Persada, Jakarta, p. 3.

¹⁶ I Made Widnyana, 2009, *Alternatif Penyelesaian Sengketa (ADR)*, Fikahati Aneska, Jakarta, p. 11.

¹⁷ *Ibid.*, p. 12

¹⁸ *Ibid.*, pp. 13 – 17.

best about the need of organization, where ADR procedure places the decision in the hand of people who have good position in the organization;

- e. Confidential procedure; ADR process guarantees the confidentiality of every party involved;
- f. Save cost and time;
- g. Bigger flexibility in designing the requisite of settlement of dispute.

Settlement of disputes through non litigation way or out of court is the process of settlement of dispute which is agreed by every party (self governing system). Those procedures can be done by various ways, they are:¹⁹

- a. Consultation is a personal act between certain parties, which is called client, with other parties which is the consultant, who gives its opinion to the client in order to fulfill the necessity and the needs of the client;²⁰
- b. Negotiation; Gary Goodpaster states that negotiation is process to reach agreement with other parties; a dynamic and various interaction and communication process, can be smooth and nuanced, just like human itself;²¹
- c. Mediation; in Black's Law Dictionary, it is stated that mediation is private, informal dispute resolution process in which a neutral third person, the mediator, helps, disputing parties to reach agreement;²²
- d. Conciliation is the effort of dispute resolution by uniting the demand of the parties by giving it to a commission or third party which is chosen by the agreement of the parties and acts as a conciliator;²³
- e. The giving of legal opinion; the role of arbitrary institution; which has role to give legal opinion to both sides in order

to settle their dispute;²⁴

- f. R. Subekti states that Arbitrase is a settlement or dispute resolution by a judge or judges based on the agreements that both parties will be subject to obey the decision given by the judge or judges they chose.

Bank is a financial institution which links between parties who has excess funds and parties who needs funds, or as institution which functions as financial intermediary.²⁵ This is the function and role of banking in Indonesia. The existence of bank in daily life can be seen from activities done by community where there is the usage of bank's facility in the payments done by community, or in this case, is called customer.²⁶ The function of bank in Indonesia has been clearly described in the Law of Banking. The giving of function and roles of bank is to advance the nation's economy.

The existence of bank cannot be separated from the existence of consumer or customers. Customers are consumer from the service of banking where consumer has demand that has to be done and become an obligation in the banking world. In the banking world, customer is a very important element; dead or life of the banking world reclines on the nature of trust from community or customer.²⁷ Nature of banking institution in Indonesia generally has the same nature with the nature of banking institution around the world. Banking law experts state that there are two nature of banking, they are:²⁸

- a. Banking institution is institution which becomes the activator of modern economy and becomes the determinants of the stability of economy of a country because if the banking institution does not work well, economy becomes

¹⁹ This can be seen in the Act Number 30 of 1999 on Arbitration. In this Act, there are at least 6 (six) procedures of settlement of dispute outside of court.

²⁰ Gunawan Widjaja, *Op.cit.*, p. 86

²¹ Rachmadi Usman, *Op.cit.*, p. 53.

²² *Ibid.*, p. 81.

²³ H. Nazarkan Yasin, 2003, *Mengenal Klaim Konstruksi dan Penyelesaian Sengketa Konstruksi*, Gramedia Pustaka Utama, Jakarta, p. 171.

²⁴ Gunawan Widjaja, *Op.cit.*, pp. 94-96.

²⁵ Muhammad Djumhana, 2003, *Hukum Perbankan di Indonesia*, Citra Aditya Bhakti, Bandung, p. 1.

²⁶ Article 1 number 16 in the Law of Banking states that a customer is any party who uses the bank's, services.

²⁷ *Op.cit.*, p. 282.

²⁸ *Op.cit.*, p. 15

inefficient, and the expected economic growth will not be reached. In this condition, it can be seen that monetary policy to reach and maintain monetary stability or macroeconomic management for economic growth and provision of employment opportunities cannot work continuously if there is no healthy banking.

- b. Banking institution is institution which rest to the trust of community therefore there is an existence of bank secrecy. The consequences of this trust is if community do not trust a bank, the bank will be susceptible to the invasion of community who withdraw on a large scale (bank runs) therefore it can potentially harm depositor and bank creditor. This also can cause other bank to be harmed.

As aforementioned, the dead or life of a bank in Indonesia related to the existence of customer who do their activities through banking or get facilities from the banking itself. The business activity of banking from saving or giving loans of course needs customer in running its activities. Customer who put their fund or loan fund from the bank is a benefit for that bank. Positioning of customer's fund to bank must be followed by a big trust to the bank. This is because the principle of trust to the bank is the initial capital to the bank in running its activities. Trust to the bank is the first step for a customer to put his/her funds to bank.

In running its activities, banking has foundation and principle that has to be done in order to maintain the economy in Indonesia. This foundation and principle is mention in Article 2 the Law of Banking which mentions that Indonesia banking in doing its business is based on economic democracy with the principle of prudent. The principle of economic democracy is economic democracy based on Pancasila and UUD Tahun 1945²⁹. In running its business, banking has a few principles, they are:³⁰

- a. Fiduciary Relation Principle
This principle is principle which bases the relation between the customer and the bank. Bank runs its business from the fund of community which is saved there based on trust, therefore every bank needs to maintain its health by maintaining and keeping people's trust. This Fiduciary Relation Principle is regulated inn Article 29 chapter (4) the Law of Banking
- b. Prudential Principle
Prudential Principle is principle which asserts that bank in running its business activity in fund accruing, especially in fund channeling to community must be very careful. The purpose of Prudential Principle is to make the bank is always in healthy condition to run its business well and obey the provision and the norm of law in banking world. The Prudential Principle is written in Article 2 and Article 29 chapter (2) the Law of Banking.
- c. Secrecy Principle
Secrecy Principle is regulated in Article 40 until Article 47 A the Law of Banking. According to Article 40 the Law of Banking, a bank must conceal the information about depositor and his/her deposit. However, in the obligatory of concealing the information is not without exception. The obligation of concealing is excepted in the case for tax purposes, settlements of debts which has been delegated to Agency of Accounts and Auction/Affairs Committee of State Receivables (*Badan Urusan Piutang dan Lelang/Panitia Urusan Piutang Negara (UPLN/PUPN)*), for the court criminal case purpose, for civil case between bank and customer, and in exchanging informations between banks.
- d. Know How Customer Principle
Know How Customer Principle is the principle applied by banks to know and learn the identity of customer, to monitor the activity of transaction of customer including to report every suspicious transaction. Know How Customer Principle is regulated in PBI No.3/10/PBI/2001 about Application

²⁹ Neni Sri Imaniyati, *Op.cit.*, p. 16

³⁰ *Ibid.*, pp. 16 – 18.

of Know How Customer Principle. The purpose that wanted to be reached in the application of Know How Customer Principle is to increase the role of financial institution with various policies to support the practice of financial institution, to avoid various possibilities that financial institution is used to be crime event and illegal activity done by its customer, and to protect the goodwill and the reputation of financial institution.

One of the most important banking principles is the Fiduciary Relation Principle; this principle is the main principle in building banking business in Indonesia. Fiduciary Relation Principle in bank cause a relation between the bank and its customer, In where the relation is the beginning of transaction which will be done by customers in the bank. Basically the relation of bank and its customer is a contractual relationship that is when a customer has establish a contractual with a ban, them the bond caused is bond based on contract or agreement.³¹ The relationship between a bank and its customer is based on the most relevant element, they are law and trust. A bank can run and expand its bank only if community has trust to place their money to the baking products in the bank. Based on the trust of community, bank can mobilize funds from community to be placed on its bank and bank will give banking services. Based on two main function of a bank, that is deployment of funds and distribution of funds, then there are two legal relationships between bank and customer, they are:³²

1. Legal relationships between bank and depositor. It means bank place itself as the borrower of funds of community (fund raiser). The form of legal relationship between bank and depositor can be seen from legal relationship from banking services such as deposit, savings, giro, and such. The form of the legal relationship can be expressed into the rule of the bank concerned

and general requirements which has to be obeyed by every depositor. Those requirements must be adapted with the existing banking services, because the requirement of one banking service will not be the same with the requirement of other banking services. In the baking services such as savings and deposit, then the general provision requirements applicable is the general provision and requirements in relation with deposits accounts and savings accounts.

2. Legal relationship between the bank and debtors. It means bank as fund providers to its debtors. The form can be as working capital loans, investment loan, or small business loan.

From law point of view, the relationship between customers and the bank is divided into two forms, they are:³³

1. Contractual Relationship
The most important and most common relationship between a bank and its customer is contractual relationship. This is true to almost all customers, either to debtors, depositors, or non debtors - non depositors customers.
2. Non-Contractual Relationship
Other than contractual relationship is there any legal relationship between a bank and its customer, especially with depositors with non depositors – non debtors customers.

Legal relationship between customer and bank is often to have problems. Problems between customer and bank can also cause prolonged dispute. Banking dispute can be seen from complaints or grievance submitted by customers about banking products or services. Those complaints, for instance, are ATM cards swallowed, unfair cuts which is done by bank to customer's fund and also about billing credit which is not in accordance with ethical propriety. Those complaints and dissatisfaction are problems which has to be faced by banking nowadays.

³¹ Rachmadi Usman, *Op.cit.*, p. 97.

³² Afandy, "Aspek Hukum dalam Perbankan dan Asuransi", <http://afandyamd.wordpress.com/2012/03/25/aspek-hukum-dalam-perbankan-dan-asuransi> accessed on 10 March, 2013.

³³ *Ibid.*

Dispute between customer and bank is not a new problem nowadays. This is caused since the beginning of banking business in Indonesia, there has been a lot of cases in banking which cause losses to community. Dispute between customers and bank must be settled as soon as possible because bank functions to maintain the stability of economy in Indonesia. However, until this day, the process of settlement of dispute between customer and bank cannot be done quickly and accurately. This problem then brings the settlement of dispute to judicial sphere. Judicial process should be the last process to be taken by both sides. Process in court causes defeat from one side, where this process also caused the loss from one side. This process sometime is thought to be biased, which also happens in case between consumer and producer. The things which make this problem keeps arise is the inequality of both sides in the bargaining position. Consumer is always in the weak bargaining position therefore customer is always disadvantaged in its bargaining position compared to the bank.

In relation with the position of the bank, the dispute between customer and the bank can disturb the banking credibility, disruption of the transaction, delayed agreement, cancellation of transitional gains, and distrust of customer to the bank. In the implementation of banking business, it is very often that the rights of customer cannot be implemented well therefore causing friction between the customer with the bank which is shown by the customer's complaints. This customer's complaints, if not settled well by bank can potentially cause conflict or dispute which in the end can loss customers or bank. The absence of standard mechanism in the handling of customer's complaint all this time has caused conflict or dispute between a customer and bank tends to be protracted, which is shown by there are a lot of customer's complaints in various media.

The complaints which is spread to public through various media can lower the bank reputation from the community point of view and can potentially lower the community's trust to banking institution if not be addressed immediately.

Because of that, to reduce negative publication about operational bank and to guarantee the implementation of the settlement mechanism for customer's complaint effectively in a sufficient period of time, then Bank Indonesia deems it is necessary to set minimum standard settlement mechanism for customer's complaint in Bank Indonesia's law which must be implemented by all bank. Other than that purpose, this law is also aimed to contain the equality of relationship between bank as business actors with customers as consumer users of banking services as mandated in Law Number 8 of 1999 on Consumer Protection (the Law of Consumer Protection).

The settlement of dispute done by banking in facing dispute between customer and bank is not only through judicial process. There are a lot of methods that can be applied by bank or customers to settle their dispute. Basically the settlement of dispute between bank and its customer can be done by two ways, they are litigation process and non litigation process. Litigation process is the settlement through judicial process while non litigation process or ADR is the settlement through mediation, negotiation, consultation, experts assessment, and conciliation.³⁴ These methods are also regulated in Law Number 30 of 1999 about Arbitrate and Alternative Dispute Resolution. Both ways in settlement of dispute aforementioned has consequences in each process like cost, time, and procedure which must be passed.

The settlement of dispute which is done by litigation will certainly bring various outcomes. Litigation process gives benefit to one side. This is because in litigation process generally win one of the parties. Ruling made by the court generally

³⁴ Abdul Haris, "Komplain Ditolak Bank Jangan Menyerah Upayakan Penyelesaian Melalui Mediasi Perbankan", <http://ekonomi.kompasiana.com/moneter/2011/10/26/komplain-ditolak-bank-jangan-menyerah-upayakan-penyelesaian-melalui-mediati-perbankan-406679.html>, accessed on 10 March, 2013.

must be implemented. Litigation process gives benefit to one side of the disputes. Litigation process generally also harm both sides of disputes. This is because generally litigation process that is done by various sides needs a lot of time and cost. This harms the sides which dispute.

The settlement of dispute through ADR has various advantages. Those advantages are:³⁵

1. Faster process. It means the settlement of dispute can be done in a matter of days, weeks, or months, unlike the settlement through judicial process which needs months or even years;
2. Cheaper cost compared to the settlement of dispute through litigation process;
3. Informal, because everything can be decided by the parties in dispute, such as arranging the schedule of meeting, place of meeting, clauses which govern the meeting;
4. Secrecy is guaranteed, where the topic discussed is only known by limited people such as "Third Parties" therefore the secret is guaranteed and is neither wide spread nor published;
5. The freedom of choosing third party. It means every side can choose neutral third party which every side respect and trust also has expertise in the field;
6. Able to maintain good relations of friendship, because in informal process every side tries hard and fight to reach settlement cooperatively therefore they are able to maintain good relationship;
7. Easier to conduct repairs, it means by using ADR, it will be easier to conduct repairs to reached agreement like renegotiating contract either about substance or consideration which becomes the base including non legal natured preamble;
8. Final, it means the decision taken by every sides is final appropriate with the agreement made in the contract;
9. Definite face to face meeting, it means the parties decide definitely about time, place, and agenda to discuss and find the solution of dispute they face;

10. Procedure of settlement of dispute is self-regulated by the parties, because the parties are not tied by laws and regulations that apply.

The settlement of dispute through ADR is taken in order to give maximum outcome to both sides. Judicial process in the court will only find who the winner and the loser is. However, with ADR, the decision taken will be a win-win solution decision.³⁶ Settlement of dispute through ADR does not necessarily produce the outcome that both sides want. There are a lot of ADR processes which meet a dead end and therefore causing the process to be longer and spent a lot of funds in the process. Hence, if ADR process does not produce any outcome, then the last way to settle a dispute is by settling the dispute in the court. Based on the argument of Gary Goodpaster, the settlement of conflict can be done by various ways done by someone or community. Every settlement of dispute has difference consequences. Because of that, in a process of settlement of dispute the customs of local community must also be noted in order to get an appropriate settlement of dispute. Settlement of dispute through non litigation process must be followed with culture and customs in the community in certain area; this is also then can give the appropriate settlement of dispute with also feature the principle of family.

Settlement of dispute between customer and bank has been regulated by Bank Indonesia (BI) as implementer of monetary authorities. BI has a big role in the effort of protecting and guaranteeing that customer is not harmed by bank's wrong action. Matter relating the protection of customers, for instance, is reports and data which is the source of information. Bank Indonesia as banking regulatory authorities is concerned to increase the protection of customer's interest in relation with bank. The protection to customer is meant to give securities and comfort to customer in saving and to guarantee the creation of Fiduciary Relation Principle.

³⁵ *Ibid.*, p. 15.

³⁶ *Ibid.*, p. 19.

BI in its effort to give securities and comfort to customers has issued various regulation in relation with customer protection. The regulation is, for example, Regulation of Bank Indonesia or *Peraturan Bank Indonesia* (PBI) No. 7/6/PBI/2005 20 January 2005 about Transparent Information of Bank Product and the Use of Customer's Private Information, PBI No. 7/7/PBI 2005 January 20 2005 about Resolution of Costumer's Complaint (PBI Pengaduan Nasabah) and PBI No.8/5/PBI 2006 January 20 2006 about Banking Mediation (PBI Mediasi Perbankan). With the publication of these regulations, it shows that government through Bank Indonesia begins to notice customer's interest in the context of bank customer's protection which tends to be overlooked by the Law of Banking or the not optimal implementation of the Law of Consumer's Protection.

Other than the issuing of various regulations about customer's protection, BI sets the effort of customer's protection as one of the pillar in Indonesian Banking Architecture. (*Arsitektur Perbankan Indonesia* (API)). API is the basic skeleton of Indonesia banking system which is thorough and gives course, form, and industrial order for 5 until 10 years. The course of development of banking industry in the future which is formulated in API is based on the vision to reach a banking system which is healthy, strong, and efficient in order to create the stability in economic system to help encouraging national economy growth.³⁷ To reach a banking system which is healthy, strong, and efficient, API has set 6 (six) pillar of banking in Indonesia, they are:³⁸

1. Healthy banking structure;
2. Effective system settings;
3. Independent and effective surveillance system;

4. Strong banking industry;
5. Sufficient supporting infrastructure;
6. Consumer protection.

The effort of costumer protection in sixth pillar of API is further written in four aspects which is related one another and together will be able to increase the protection and empowerment of customer's right. Those four aspects are:³⁹

1. The making of standard mechanism of customer's complaining.
2. The forming of mediation banking institution.
3. The making of standard transparent information product.
4. Enhancement of education to customer.

The issuing of regulations related with customer protection by BI and also the enactment of protection of consumer in pillar of API shows that customer is the main factor in the banking business. Consumer or customer is the main factor of the increase or the decrease of banking in doing its activity. This also becomes the base when talking about settlement of dispute between customer and bank. Bank and customers who have dispute must be settled according to the principle and foundation found in the law. Settlement of dispute between customers and bank should be done through litigation; this is to give comforts to customers in settling his or her dispute. Fiduciary Relation Principle must be held firmly by the bank to settle a dispute between customer and the bank. Fiduciary Relation Principle will give positive impact to the ongoing of banking activities in Indonesia.

Professor said that settlement of dispute needs to prioritize the achievement of consensus. Settlement of dispute with the achievement of consensus is the culture of Indonesian community which is written in Pancasila and UUD 1945. Because of that, settlement of dispute through non litigation needs to be prioritized in settling

³⁷ Bank Indonesia, "Perbankan-Arsitektur Perbankan Indonesia", <http://www.bi.go.id/web/id/Perbankan/Arsitektur+Perbankan+Indonesia/>, accessed on 10 March, 2013.

³⁸ *Ibid.*

³⁹ Bank Indonesia, "Perbankan Arsitektur Indonesia, Perlindungan Nasabah", <http://www.bi.go.id/web/id/Perbankan/Arsitektur+Perbankan+Indonesia/Perlindungan+Nasabah/>, accessed on 10 March, 2013.

disputes especially banking dispute. As aforementioned, settlement of dispute through non litigation can be done by various ways. Nowadays the settlement of banking dispute done by BI is done by mediation. Settlement of dispute through mediation can be said the best way to settle a dispute. Mediation is a settlement of dispute which has goodwill, consensus, and mediator. Mediator working as medium in the settlement of dispute does not have the authority to decide. Mediator only works to help both sides to be able to settle their dispute. Therefore, the role of mediator is only as balancer element in the settlement of dispute. The settlement of dispute done through mediation is done purely by both sides only. Settlement of dispute through mediation is done by the decision of both sides. Based on that, the writer argues that the settlement of dispute through mediation is an appropriate way to settle a dispute in the settlement of banking dispute. This is also supported by the presence of Fiduciary Relation Principle which is held by banking in running its business.

Settlement of dispute by ADR is one of the fast and cheap settlement. This fast and cheap process can give positive impact to the continuation of banking business in Indonesia. Settlement of dispute through ADR is hoped to be guidance in every settlement of dispute especially banking dispute. Implementation of mediation is the most effective way in settling banking dispute out of court. This is useful to protect customer's right and also to protect bank's reputation. As has been stated by Philip D. Bowstick that ADR aims to settle legal dispute out of court for the benefit of both sides, then the settlement of dispute of customer and bank must be done through non-litigation process. This is to give benefits to both sides which dispute. ADR also decrease the cost of litigation and the time taken to settle the dispute. Settlement of dispute through litigation process generally needs a lot of time and money; therefore, settlement of dispute through ADR must be prioritized.

This time Indonesia House of Representatives (*Dewan Perwakilan Rakyat Republik Indonesia* (DPR RI)) with the government has formed the National Legislation Program (*Program Legislasi Nasional* (Prolegnas)) of 2009-2014. The Amendment in the Law of Banking becomes one of the priorities for sessions in 2012. One of the changes done in the Law of Banking is concerned with the settlement of dispute between customer and the bank. Settlement of dispute between customer and bank is hoped to be settled by non litigation process first, either through mediation, consultation, etc. This can give comfort and security to customer and also able to protect bank's reputation.

C. Conclusion

Banking activity in Indonesia is activity based on Fiduciary Relation Principle where customers trust their fund to banks in Indonesia. Customer's trust to bank must be maintained and become the main factor in soliciting customer. In order to maintain this trust then in the settlement of dispute between bank and customer, needs a settlement which can give win-win solution to both sides customer and bank. Settlement of dispute through litigation or usually called ADR is the settlement of dispute which can give win-win solution to both sides. Settlement of banking dispute must be done through non-litigation process or ADR. This is then will give positive impacts to settlement of dispute and also especially to the presence of banking. The presence of healthy and trusted banking, also able give guarantee of security and comfort to customer is the main factor in banking business activity. Principle of family ought to be the main factor in settling banking dispute, therefore ADR is the most ideal settlement of banking dispute to settle banking dispute.

Maintaining the trust of community to banking in Indonesia is the role of the central bank and banks in Indonesia. Customer's trust to bank is the first modal for bank to run its business. The amendment of Law of Banking nowadays done

by Indonesia House of Representative becomes momentum to give chance to bank to improve its relation with customers. Matters about procedural law in order of settlement of banking dispute must

be included in the stem of Amendment of the Law of Banking. The matter is about the obligatory of implementation of Alternative Dispute Resolution or ADR in settling banking dispute.

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