

# The Authority of Dispute Resolution Customer Agency in resolving Customer Disputes Funding Institution after The Financial Services Authority Regulation No. 1/POJK.07/2014

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**Abstract:** This research discusses the competence or authority of the Dispute Resolution Customer Agency in resolving Consumer Financing Institution disputes after of Financial services authority Regulation No: 1/POJK.07/2014 and the legal consequences of Dispute Resolution Customer Agency, especially in the post-financing institution sector. The theory used as an analytical scalpel to answer these two things is the theory of authority, the theory of legal certainty and the theory of dispute resolution. The method used is a normative juridical approach. The results of the study explain that the authority of the BPSK in resolving Financing Institution disputes after the issuance of the Financial Services Authority Regulation No. 1/POJK.07/2014 and after the issuance of act No. 21 year 2011 about Financial services authority, indirectly there is a tug of war of Dispute Resolution Customer Agency authority in resolving consumer disputes. Issuance of Regulation by the Financial Services Authority No. 1/POJK.07/2014 regarding Alternative Dispute Resolution Institutions, of course, this has given Dispute Resolution Customer Agency a limit of authority in resolving consumer disputes. Legal consequences for the decision of the Consumer Dispute Resolution Agency after the issuance of Financial services authority Regulation Number: 1/POJK.07/2014. The alternative dispute resolution can only impose administrative sanctions in accordance with Article 12 in the form of written warnings, restrictions on business activities, freezing of business activities, revocation of business licenses, and / or fines, namely the obligation to pay a certain amount of money. Dispute Resolution Customer Agency and The alternative dispute resolution both have no absolute competence in matters of consumer dispute resolution. Although the rules contained in the Financial Services Authority Regulation Number 1/POJK.07/2014 are specific, they cannot immediately revoke BPSK's authority in resolving consumer disputes out of court because the provisions of *lex specialis* must be equal to those of *lex generalis* means that in order to apply this principle, the hierarchical level of the legislation must be equal.

**Key Word :** Dispute Resolution Customer Agency, The Alternative Dispute Resolution, Financial Services Authority.

## 1. INTRODUCTION:

Legal protection for consumers are important to support legal relations between business, the consumer to this the act no. 8 year 1999 about consumer protection are expected to provide security for consumer to not is in a place not had. The establishment of the act no. 8 year 1999 adopted at 20 april 1999 but to effectively on 20 april 2000 set between and another in article 45 paragraph (1) the act of consumer protection, wrong that every consumer can sue the undertaking through institutions to resolve disputes between consumers and the entrepreneurs or through judicial are common and articles 45 verse (2) the act of consumers protection, dispute resolution was said consumers through the courts or out court based on voluntary choice the parties in a dispute.

The presence of an alternative dispute resolution the new unavoidable also financial services sector. This cannot be separated from the mandate contained in the act number 21 year 2011 on authority financial services and financial services authority no. 1/2014 intended as a follow-up to the authority financial services providing protection to consumers. Financial services sector A series of consumer protection covers, education information services and complaints, to facilitation. Resolution was so far the resolution was financial services often reached an agreement between institutions consumer financial services. In order to overcome these issues, then required by alternative dispute settlements to resolve disputes, quickly cheap, fair and efficient [1]. It takes the alternative dispute resolution in resolving disputes between consumers and the industry.

The ordinance by financial services authority No. 1/POJK.07/2014 about the institution of alternative dispute resolution this should was gave ear to dispute resolution authority of dispute resolution consumers from consumers.

One limits are seen in the consumer in the financing dispute resolution, according to section of 39 verse 2 regulation financial services authority no. 1 /POJK.07/2013 dispute resolution financial consumer in the services sector out alternative done by a court of dispute settlement has been listed in financial services authority as contained in the legislation of financial services authority number 1/POJK.07/2014 about the institution alternative dispute resolution.

This institution is the resolution of disputes between consumers and the financial services as contained in article 4 financial services authority No. 1/POJK.07/2014 about the institution alternative dispute resolution institutions are conducting activities which are in the country banking sector, capital market, insurance, pension funds, funding institution, and other financial services. The alternative dispute resolution has already meet the accessibility, independence, justice, efficiency, and effectiveness as stipulated in article 5, 6, 7 and 8 financial services authority No. 1/POJK.07/2014 alternative dispute resolution about the institution financial services sector. This institution is expected to be played the role well in resolving disputes that occur between consumers with financial services business quickly, cheap, fair and efficient. This is at least can increase consumer confidence for entrepreneurs of financial services specifically and strengthen microfinance institutions in Indonesia in general.

Especially in settlement sector funding institution can be resolved through the Financing of mediation agency and pawnshops and Indonesian venture. The dispute settlement be done by the consumers it is settlement demonstrates the existence of overlapping authority between the settlement of consumers with the Financing of mediation agency and pawnshops and Indonesian venture as the alternative dispute settlements that has been designated exclusively by financial services authority to resolve disputes consumers of the funding institution.

## 2. CONCEPTUAL FRAMEWORK:

- **Dispute Resolution Customer**  
Consumer disputes is dispute with regard to the violation of the right consumers which includes all law that is civil, criminal, and the national in scope. A. Z . Nasution argues dispute consumers is a row between consumers with entrepreneurs (either in public or private law) law products of particular goods that is in consumer consumption, and or services offered by producers and business operators [2]. Dispute resolution choice buyers in principle be submitted to the parties concerned. Is that will be through the courts or outside the court.
- **Funding Institution**  
The term funding institution is an alloy of english namely financing institution. In terms of the funding institution is a who are paying for a certain business or individual. This financing is by providing funds to the company that can be shaped the cash or money can also in the capital goods . Of the funding is their business activities financing focuses more on the function, that is a form of capital goods or of providing funds to pull funds directly from the community.
- **Dispute Resolution Customer Agency**  
Dispute Resolution Customer agency is a special institution have regulated by the law consumer protection which specializes in handling dispute consumers. Dispute Resolution Customer agency Also is a dispute that checks and cut those who work as the court.

## 3. LITERATURE REVIEW:

Dispute resolution consumers agency are the to handle and resolve disputes consumers [3]. Dispute resolution consumers agency as authorized to dispute resolution consumers outside the court. Basis remains is article 1 verse 11 act no 8 year 1999 about consumer protection Jo article 1 verse 5 minister regulation of the Republic of Indonesia no 06/M-DAG/PER/2/2017 about Dispute resolution consumers agency.

Dispute resolution consumers agency Is an agency that its creation mandated in the act of no. 8 years 1999 about consumer protection but just could be set up in de jure decision of the Indonesian President no. 90 years 2001 21 2001 on July on the establishment of consumer dispute settlement body which is followed up with the ministerial decree industry and of trade no. 301/MPP/Kep/10/2001, removal of about the dismissal of the member and the secretariat of Dispute resolution consumers agency and as a de facto newly formed in 2002 along with was inaugurated the limbs resolution of disputes consumers based on the ministry of industry and trade no. 605/MPP/Kep/8/2002 about the appointment of the city of Medan government, the city of Palembang, the city central Jakarta, the city of west Jakarta, the city of Bandung, the city of Semarang, the city of Yogyakarta, the city of Surabaya, Malang city and Makassar city [4].

Responsibility and authority of the Dispute resolution consumers agency based on article 52 act of customers protection Industry and trade minister decree no. 350/MPP/Kep/12/2001 published on 10 December 2001 about implementation of Responsibility and authority Dispute resolution consumers agency Jo article 4 regulation of Trade minister Republic of Indonesia no. 06/M-DAG/PER/2/2017 about Dispute resolution consumers agency.

The verdict of Dispute resolution consumers agency limited to 3 (three), alternative namely:

- a. Peace;
- b. The lawsuit was denied;
- c. The lawsuit granted.

Based on article 1 number 7 Presidential Regulation no. 9 year 2009 about funding institution, what is meant by consumer financing are the financing for the procurement of goods under the consumers with a payment in instalments. Consumer financing is one of the financing models conducted by financial companies, in addition to leasing activities such as, factoring, credit cards and so on. The market target of the consumer financing it is clear namely consumers.

In addition the amount of the charges given per consumers relatively small target locations of the remembrance of goods funded in consumer financing is goods need that will be used by the consumer for the purpose of his life. Therefore, the end of the funding is also spread, will view of the fallen into a lot of consumers by the provision of the relatively small, is safer for the cost of the contributors [5].

#### 4. METHODS:

An approach to a problem method used is the method normative juridical, namely research law literature. Legal research done by means of research or data secondary library materials. An approach to a problem of laws, through research the history of law and theories laws relating to the research.

The research used in this research is descriptive namely research that provides data on a state of being or social trend that develops within the community so that research is expected to memeperoleh a whole description, complete and systematic about the object to be examined. The study is done by describing the research funding institution on a settlement of consumer disputes in the consumer dispute resolution agency [6].

#### 5. DISCUSSION:

The existence of Dispute Resolution Customer Agency Normatively can be seen from laws governing authority in performing their duties and functions in resolving the disputes between consumers. with entrepreneurs. But the authority as it is in the no 8 years 1999, there are also some government regulation and trade minister regulation. Some of them are:

1. Government regulation number 59 year 2001 about About the institution consumer protection ngos, Supplementary sheet of the Republic of Indonesia number 4127;
2. Presidential decree no. 90 year 2001 about the establishment of Dispute Resolution Customer Agency in 10 (ten) district/city;
3. Presidential decree no. 108 year 2004 Dispute Resolution Customer Agency in 7 city and 7 district;
4. Presidential decree no. 18 year 2005 formed Dispute Resolution Customer Agency in padang city, indramayu district, bandung district and tangerang district;
5. Presidential decree no. 50 year 2017 about National strategy consumer protection, Supplementary sheet of the Republic of Indonesia year 2017 no. 96;
6. A decree of the minister of industry and trade no. 350/MPP/Kep/12/2001 about implementation of the responsibility and authority of Dispute Resolution Customer Agency;
7. Trade minister regulation no. 17/M-DAG/PER/4/2007 about responsibility and authority of Dispute Resolution Customer Agency and Dispute resolution procedures for the consumer;
8. Trade minister regulation no. 06/M-DAG/PER/2/2017 about Dispute Resolution Customer Agency;
9. The set of the memorandum of understanding the directorate general of consumer protection and orderly niaga, the directorate general of consumer protection and orderly niaga the ministry of trade in 2017.

Along with the mandate given by the maker of act to provide protection to consumer to not harmed by the act of entrepreneurs, then the maker of act provide legal protection to the parties the to resolve disputes outside trial, setting dispute settlement outside the trial is regulated first through act number 8 years 1999 on consumer protection. The existence act of consumer protection makes the establishment of a special institution in resolving consumer disputes outside the trial namely Dispute Resolution Customer Agency regulated Through industry and trade minister decree No. 350/MPP/Kep/12/2001 about implementation of the responsibility and authority of Dispute Resolution Customer Agency;

#### 6. ANALYSIS:

#### **A. Authorities of the Dispute Resolution Customer Agency In resolving consumer disputes funding institution after regulation of Financial services authority No. 1/POJK.07/2014**

Resolution of disputes consumers through the resolution of disputes consumers will emphasize resolution of disputes in the field of consumer goods and services [7]. The author argues as for settlement of the dispute resolution conducted by the consumer financial services authority after regulation number 1/POJK.07/2014 about the institution alternative dispute resolution which govern consumer dispute resolution in the financial sector outside the court it is a form of There is no act harmonisation between act of consumer protection with the financial services authority act based on financial services authority.

Agree with the explanation was done by Bagir Manan which states the possibility of why can the occurrence of there is no harmonisation law. And as for disharmonisation happens between act of consumer protection with the financial services authority based on act of financial services authority were due to the formation of things done by different agencies and often in a very different that led to legal uncertainty [8].

The author argues that passed the financial services authority number 1/POJK.07/2014 about an institution by alternative dispute settlements this attraction of authority between the settlement of consumers with the mediation and the alternative dispute settlements that specifically designated by the authority financial services in the financial services authority was to resolve disputes consumers. As for the settlement of consumer disputes in resolving the financing after the financial services authority number 1/POJK.07/2014 about an alternative institution of dispute resolution, writer connect with way the theory. Indroharto offer three different types of the authority that comes from the act. the authority is covering the attribution, authority delegates, and mandate [9].

The mandate given to the financial services authority through act number 21 years 2011 about financial services authority to regulate and monitor the financial services. So arranged authority include dispute resolution in terms of consumer financial services sector outside the court. It is formed of alternative dispute resolution business as a financial services authority in providing protection to consumer to their rights can be protected. The procedure of dispute settlement arranged consumer financial services sector outside the court. In terms of financing outside the court dispute resolution based on the financial services authority number 1/POJK.07/2014 about the institution of alternative dispute resolution.

The legal basis for the establishment of Dispute Resolution Customer Agency is a form of the authority of the attribution were delivered by the maker of the of the act no.8 years 1999 about consumer protection. In article 49 verse 1 the act of consumer protection *Jo* Article 2 of the decree of the minister of industry and trade number 350/MPP/Kep/12/2001 that arranged that the process of forming a government with the resolution of disputes in the regional level II dispute resolution consumers outside the court which agency that referred to namely the consumer with the resolution of disputes. Duty and authority of that institution arranged through a decree of the minister of industry and trade number 350/2001 about the implementation of the duties and authorities of Dispute Resolution Customer Agency.

Related the role as an institution which having the function of to protect consumers in the act of consumer protection in the provision of article 52 duty and authority of dispute resolution customer agency is:

1. Implement handling and dispute consumers resolution a way through mediation or arbitration proceedings or conciliation;
2. give consultation consumer protection;
3. Monitor for raw klausula;
4. Report to a public inquiry if there is provision in this act;
5. Receiving complaints either written or not written, from the customers concerning the violation of consumer protection;
6. Research and the dispute consumer protection;
7. Called business doers that is believed to have been violations of consumer protection;
8. Calling and invite witnesses , an expert witness and / or any person regarded know a violation of this act;
9. Asked investigators to illustrate the referred to in letter g and the letter h, that is unwilling to respond to of Dispute Resolution Customer Agency ;
10. Get, research and/or judging letter , document a sign to the investigation and/or examination;
11. Decide on and set or no losses at the consumers ;
12. Tell to the business players in violation of consumer protection;
13. Told the award to business doers that violations of consumer protection;
14. Administrative raft of sanctions to the entrepreneurs who violates the provision of this act.



## **B. Due to laws against decisions of Dispute Resolution Customer Agency Particularly the funding institution after the regulatin of financial services authority No: 1/POJK.07/2014**

Alternative dispute resolution institutions prescribed by authority financial services give dispute resolution services in the form of mediation, adjudication and arbitration. These institutions can only give administrative sanctions in accordance with article 12 in the form of a written warning restrictions, business activities freezing, business activities revocation, business activities and/or fine the obligation to pay a certain amount of money. A list of the alternative dispute settlements in the financial services overseen by the financial services authority covering the mediation and arbitration Indonesian insurance, the Indonesian capital market, arbitration the mediation pension funds the Indonesian banking, alternative dispute settlements the arbitrae and mediation guarantying companies Indonesia and the mediation financing and pawnshop of Indonesia [10].

Dispute Resolution Customer Agency and the alternative dispute resolution actually do not have absolute competence in matters of dispute settlement consumers. They are not the judiciary who live in one of the judiciary. Their position is as the resolution of disputes out of court. This means that all the parties agree to settle their disputes at the consumer dispute resolution, and choice of this forum is valid for use. The problem will arise when the usually used is arbitration, which means party to the dispute (usually entrepreneurs) could have and brought the award dispute resolution body that consumers to the district court and the supreme court. If the program was not arbitration of the solution reached by the parties should be stopped only for the consumer dispute resolution agency.

Writer assess by the presence of disharmony between the act of consumer protection with the financial services authority cases the principle of *lex specialis derogat legi generale* can be carried out and to be applied. Although there are rules in the regulation of financial services authority no. 1/POJK.07/2014 specific, but cannot and deprive of dispute resolution agency the consumers in settling disputes consumers outside the court because the provisions *lex specialis* have to equivalent level boosted under the terms of *lex generalis* it means to be able to the introduction of the principle of a hierarchy the act of have to equivalent levels. This needs to equalization benefice beforehand, as a man by said that the existence of the institutions by alternative dispute settlements in the rate of the level of the act.

It is important to note that the body settlement consumers actually do not have the authority to resolve disputes with their consumer financial services is one funding institution it was because the providers of financial services was under the authority financial services. Basically if there was an award of consumer dispute settlement in an effort to resolve disputes have decreed that consumers do not pay to the institutions financial services until there is absolute legal force, and also often sentenced to the criminal organizations, financial services so this brings overlap between the agency consumers dispute and the financial services authority in taking on such financial service providers.

After the introduction of greater regulatory specialized in settling disputes consumers the financial service sector by authority financial services related to the protection of consumers in the financial sector as regulated in the law number 21 year 2011 about financial services authority, as for due to law inflicted after the issuance of the financial services authority regulation no. 1/POJK.07/2014 is a body of the completion of the decree of the still in settling disputes consumers well as financial institutions in the aftermath of the escape of the regulation. This is due to that regulations issued by authority financial services the levels are still under the provisions of a statute no. 8 year 1999 about consumer protection.

Of course applies the principle of *Lex Superiori Derogat Legi Inferiori*, which means legislations which are higher the exclusion of/beat legislations which are lower. As set out in article 7 paragraph 1 the act no. 12 year 2011 on the establishment of law and rule that explain about types and the act. Next in article 7 paragraph 2 the act no 12 year 2011 on the establishment of legislation also explain who “the force of law the act of” position does this mean when there was a gap in a provision of the act, so a bit of their strength is determined on the basis the a hierarchy that has been set up. Hopefully with a dispute resolution board decisions now consumers who based on bill no 8 years 1999 about consumer protection, then keep having the force of law.

So of course of decisions of Dispute Resolution Customer Agency when they came out financial services authority regulation no. 1/POJK.07/2014 fixed having the force of law as envisaged in article 54 paragraph 3 of the no 8 year 1999 about consumer protection “the award of the tribunal shall be final and binding”. That there are still authorized dispute resolution body the consumers in the resolution of disputes consumers well as financial institutions outside the court so the issuance of the financial services authority regulation has consequences not laws against dispute resolution body consumer decisions. It was because the absence of the requirement for a body of the completion of dispute consumers to follow the provisions of the lower levels a hierarchy the act of the act of consumers protection. So with enactment the principle of *lex superior derogat legi inferiori* rules that was found in

the act of consumer protection still can be implemented because legislation of Dispute Resolution Customer Agency more superior than Alternative dispute resolution institutions.

## 7. CONCLUSION:

- a) The authority of Dispute Resolution Customer Agency in resolving consumer disputes funding institution after the financial services regulation authority no. 1/POJK.07/2014 and after the ratification of no. 21 years 2011 about financial services authority and indirectly being debated authority by Dispute Resolution Customer Agency in resolving consumer disputes. Rule by the financial services authority no. 1/POJK.07/2014 this gave them different restrictions was the dispute resolution body resolve disputes consumers in consumers. One limitation is seen in consumer dispute resolution in the field of funding institution, which under regulation no 39 verse 2 financial services authority no: 1/POJK.07/2013 settlement of consumer financial services sector outside the court done by alternative dispute settlements that have listed on the financial services authority as contained in the regulation of financial services authority number: 1/POJK.07/2014 about Alternative dispute resolution institutions especially in consumers funding institution dispute resolution would be solved through the mediation for pawnshops and Indonesia ventura. But rather because there were differences in levels of the hierarchy the act of dispute resolution body consumers remains in completing administrative dispute consumers well as financial institutions outside the court along the absence of a more specialized in the level of the act of stating the repeal of the agency with the resolution of disputes the consumers in settling disputes consumers or the determination of a special institution in the resolution of disputes consumers well as financial institutions is certainly dispute resolution body consumers will remain can do with the resolution of disputes consumers well as financial institutions outside the court.
- b) Due to laws against decisions of Dispute Resolution Customer Agency Particularly the funding institution after the regulatin of financial services authority No: 1/POJK.07/2014 Alternative dispute resolution institutions can only give sanction administrative in accordance with article 12 in written warning, restriction on an activity, business freezing business activities, revocation the permit to conduct business, and/or fine the an obligation to pay a certain amount of money. A list alternative dispute resolution institutions in the services sector supervised by financial authority financial services covering of mediation and arbitration Indonesia insurance, Indonesian capital market of arbitration, mediation pension of funds, institutions banks, alternative dispute resolution of arbitrae and mediation guarantying companies Indonesia, and the mediation financing pawnshops of Indonesia institution, ventura Indonesia. Dispute Resolution Customer Agency and the alternative dispute resolution actually do not have absolute competence in matters of dispute settlement consumers. They are not the judiciary who live in one of the judiciary. Their position is as the resolution of disputes out of court. This means that all the parties agree to settle their disputes at the consumer dispute resolution, and choice of this forum is valid for use. The problem will arise when the usually used is arbitration, which means party to the dispute (usually entrepreneurs) Could have and brought the award dispute resolution body that consumers to the district court and the supreme court. If the program was not arbitration of the solution reached by the parties should be stopped only for the consumer dispute resolution agency.

## 8. SUGGESTIONS:

- a) The maker of act should give explanation and affirmation clear in determining that the authority of authority or institutions with the resolution of disputes consumers outside the court. When the financial service sector institutions must be implemented institution such as the solving the problem by alternative dispute settlements so the need for the establishment of a body of mediation arrangement on financing and pawnshops and ventura Indonesia as one of the alternative dispute settlements in the rate of law to give position will be strengthened as an institution which in settling disputes consumers well as financial institutions outside the court. The government should established the institution of financing mediation and pawnshops and Indonesia ventura every distict/ city so far therefore people do not have to go to region of central only to dispute resolution buyers in the funding institution.
- b) The government should put the alternative dispute resolution on the same level with the consumer dispute resolution through act, to make it from both institutions alternative dispute resolution is a balanced. Then the government expected to put both institutions, this dispute resolution the government has split the boundaries of authority these two institutions to avoid the overlapping authority.

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