



Measuring Opportunities and Challenges in Dispute Resolution of Fintech Sharia Business Through LAPS

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Abstract

This research was conducted to outline the opportunities and challenges of resolving fintech business disputes through the Alternative Dispute Resolution Institute (LAPS) in Indonesia. The research method used in this research is a legal research approach and qualitative approach that is to review primary and secondary data sources related to regulations on business dispute resolution in Indonesia. The results show that fintech plays a role in encouraging the economic development of the community, especially as an alternative to financing. LAPS serves as a solution to dispute resolution of business people in Indonesia this institution was chosen because it is more effective and efficient, the verdict is final and binding that is contrary to litigation lines that seem time-consuming and expensive costs. LAPS opportunities are very large for the rise of digital-based businesses and payments that still leave many legal problems while LAPS khusus fintech is not yet available where LAPS provides services that are in line with digital business; the settlement is a win-win solution, which is in accordance with the character of the business world, which is obliged to manage risks, including reputational risk, operational risk and legal risk. While the challenges faced by LAPS in fintech include: Dualism alternative fintech dispute resolution can be through LAPS and can also through the Consumer Dispute Resolution Agency (BPSK); Limited Legal Infrastructure The number of fintech transactions that continue to increase in line with the potential for disputes that will occur; Availability of Mediators and Arbitrators of LAPS Financial Services Sector.

1. Introduction

The rapid development of technology makes it easier for people to carry out financial transactions. Usually people can only make financial transactions directly by coming to the office of the intended financial institution, but with technology, digital-based financial services are now available that make it easier for people to access them (Aliyudin, 2020). One of the digital financial services that is currently in demand is financial technology or often abbreviated as fintech. Fintech is an information technology-based service as a form of financial service innovation,

especially in the non-bank financial industry, compare it with (Wasiaturrahma et al., 2019).

Currently, fintech companies in Indonesia are based on product categories, it is estimated that there are around 250 fintech companies in Indonesia. The majority of fintech companies in Indonesia have a business model in the form of digital lending, which is 55% as shown in the following table:

Product Category	Presentation
Digital Lending	55%
Capital Rising Crowdfunding	24%
Digital Payment	21%
AI/MI/Big Data	12%
Tranding Capital Market	6%
Enterprise Tech For Finance	6%
Asset Management	3%
Enterprise Financial Management	3%
Insure Tech	0%
Personal Financial Management	0%

Source: Cambridge Center for Alternative Finance (2019)

The presence of this fintech can be reached by the wider community because of easy internet access which has spread in almost all regions of Indonesia. With a fairly simple process compared to financial institutions such as banks, this fintech is quite attractive to the public, especially in its digital lending products. With so much public interest in fintech, of course there are still risks, such as disputes over non-fulfillment of obligations that must be paid. This is certainly an opportunity and a challenge for fintech in developing its business, this dispute resolution can be pursued through litigation and non-litigation (alternative dispute resolution institutions), this study tries to unravel the opportunities and challenges of resolving fintech business disputes through the Lembaga Alternative Dispute Resolution (LAPS) in Indonesia.

2. Methods

The legal research approach and qualitative method are used in this study by conducting an assessment of data sources both primary and secondary in the form of laws and regulations related to business dispute resolution and laws and regulations related to fintech business platforms in general and sharia fintech which are then analyzed systematically, normative juridical in order to obtain the expected conclusions.

3. Results And Discussion

3.1 The Role of Fintech in Community Economic Development in Indonesia

The existence of technology that was created to facilitate human work is increasingly changing the view to being able to make work faster, more practical and

easier. In its development, technology has spread to all fields ranging from social, political, and economic fields. Technological developments in the economic field started from the industrial revolution 1.0 when the steam engine was invented which replaced the work of workers in British factories until the era of the digital industrial revolution, better known as the industrial revolution 4.0. This new era has changed the conventional economic system which in fact has the principle of bringing together sellers and buyers in one place (Marsudi & Widjaja, 2019). However, with the industrial revolution 4.0, the parties are no longer required to be in the same place when conducting business transactions.

In financial institutions, digital technology has also begun to be adapted such as sms-banking, mobile-banking and so on. As an institution, besides serving bank deposit products, it also plays an important role in serving the needs of the community in the field of financing. However, to be able to meet the financing requirements, prospective recipients of financing are required to meet bankable requirements. However, in fintech, bankable requirements are not required in applying for financing, therefore the development of fintech is very rapid today. Fintech is an abbreviation of financial technology whose meaning is the use of technological sophistication in provide financial services so that maximum service efficiency occurs (Rahmat, 2020).

Fintech strongly supports community economic development in business financing through technology. According to wsiaturrahma Fintech is also defined as modern technology-based innovation in financial services that are practical, easy, convenient and economical (Wasiaturrahma et al., 2019). Fintech has advantages compared to financial services that are not based online, including the following (Wasiaturrahma et al., 2019) which can be more specific compared to (Silalahi et al., 2020):

- a) Increasing Financial Inclusion
Financial inclusion is an effort to minimize barriers so that price and non-price access to financial services are opened for the public. With the existence of fintech, financial institutions can also increase the efficiency of office or employee procurement costs, because the public can access it online without having to come in person.
- b) Improving Financial Literacy
Ease of internet access in the community is expected to increase the use of fintech. With the increasing use of fintech, people will be more familiar with the features and sophistication of financial technology.
- c) Increase Efficiency and Effectiveness
With the existence of fintech, the public can increase the efficiency of travel costs and can increase the effectiveness of the transactions carried out. Financial institutions can also reduce employee costs, office costs, and administrative costs in each transaction.
- d) Increase Economic Growth
Fintech can bring together investors and people who need funds to develop a business or set up a business. With the development of community

businesses, it can increase the level of production and open up jobs widely so as to increase economic growth.

Fintech is becoming popular in Indonesia for the following reasons (Amalia et al., 2020):

- a) Massive use of the internet and smart phones requires online transactions.
- b) The assumption about the practical side of fintech compared to conventional services.
- c) Widespread business digitization.
- d) Business start-ups that require a simple platform and service.
- e) The social media used is the reason for the development with the development of data that is accessed to be used as risk analysis material.

In addition to the financing facilities shown by fintech to the public, as a legal state, Indonesia has also made various rules in fintech activities. Regulations related to fintech transactions in Indonesia are currently regulated in several related regulations, such as the Financial Services Authority Regulation (POJK) Number 77/POJK.01/2016 concerning Lending Services Information Technology-Based Money (LPMUBTI), Bank Indonesia Regulation (PBI) Number 18/40/PBI/2016 concerning Implementation of Payment Transaction Processing (PTP), Bank Indonesia Regulation (PBI) Number 19/12/PBI/2017 concerning Implementation of Financial Technology, Act Number 8 year 1999 on Consumer Protection, and Act Number 11 year 2008 on Information and Electronic Transactions. Specifically for sharia-based transactions, the related DSN MUI fatwa applies, namely DSN MUI 117/2018 regarding Information Technology-Based Financing Services Based on Sharia Principles which continues to require input to develop in a better direction such as conducting comparative studies with other countries that also practice sharia fintech businesses. (Alfaris et al., 2019). Relevant regulations provide protection for the public against the rise of illegal fintech, protection of personal data, and others where regulatory problems, especially regarding sharia fintech also still require intensive resolution (Habibunnajar & Rahmatullah, 2020). OJK's limitations in overcoming problems that occur in the fintech business require the promulgation of more specific regulations like the law so that these business actors get legal protection and assurance. (Dakum & Praja, 2020)

3.2 The role of LAPS in resolving fintech disputes in Indonesia

Like other financial institutions, Islamic fintech often experiences disputes that cause a dispute between investors and recipients of financing. Disputes are usually triggered from non-compliance with contracts that have been agreed upon by the parties. Disputes are situations and conditions where people experience factual disputes with each other and disputes that exist only in their perceptions. Disputes occur because there is no common ground between the disputing parties (Rahmat, 2020).

In fintech dispute resolution, there are still many shortcomings of legal sources that regulate fintech dispute resolution. Dispute resolution can be reached through litigation and non-litigation. Litigation is a dispute resolution system through a

judicial institution that produces a win-lose solution for the disputing parties. This non-litigation route is a dispute resolution system through non-judicial means, including negotiation, mediation, conciliation, arbitration, expert judgment, and settlement through debt collector intermediaries (Rahmat, 2020).

In the event of a problem, the Act of Electronic Information and Transactions has actually provided space for the settlement of civil disputes through litigation or non-litigation, in this case through ADR/APS or through the Alternative Dispute Resolution Institution. Dispute resolution institutions have been adopted by many business people in resolving the disputes they face. Because the litigation path can be a bad thing for the development of the business being run. Because the Supreme Court is still relatively old, expensive and high-risk and difficult in deciding the outcome of the decision. Coupled with the rise of the legal mafia, which can win over one party in an unfair way, it adds to the distrust of business people in resolving disputes they face through litigation institutions.

There are so many risks that are faced when resolving disputes through litigation institutions caused by various things such as confidentiality that is not maintained by the court which is public and open until the final decision is reached ends in a win-lose and can end a business relationship. Dispute resolution outside the court through LAPS is more desirable because it is more effective and efficient. There are many LAPS models that can be taken, starting from negotiation, mediation, conciliation and arbitration (Supriyatni & Nurjamil, 2021).

Therefore, dispute resolution through conventional litigation institutions or offline is not appropriate to use. Article 29 letter e of Finance Service Authority Regulation number 77/POJK.01/2016 also mandates that dispute resolution must be carried out in a simple, fast and affordable cost. The financing process is classified as online and many activities are carried out via the internet, thus requiring a dispute resolution process that is faster, easier and cheaper. Finance Service Authority should establish an online ADR Institution that specifically handles fintech business disputes. (Hariyani et al., 2017)

3.3 Opportunities and Challenges of Alternative Dispute Resolution Institutions

As an alternative institution, LAPS offers a business dispute resolution model which is of course different from the usual settlement. In this case, what is expected is the resolution of business disputes and the maintenance of a business climate and conduciveness so that its existence becomes very important when it is associated with the essence of business which is generally profit oriented (Nurjamil, 2019). Opportunities that LAPS can take advantage of in fintech to assist business development include:

- a) The era of the industrial revolution 4.0 which is still developing with the rise of e-commerce businesses and still requires an institution to resolve disputes that are faced when a dispute occurs.
- b) ADR institutions are cheaper, faster and simpler in resolving disputes than litigation institutions, as well as rampant legal mafia practices that cause bad consequences for businesses affected by disputes.

- c) Compatibility in the dispute resolution process in the digital era that must be carried out effectively and efficiently.
- d) Mediation is carried out in private with a win-win solution, which is in accordance with the character of the business world, which is obliged to manage risks, including reputation risk, operational risk and legal risk. (Abubakar & Tri, 2019).

Meanwhile, the challenges faced by LAPS in fintech include:

- a) There is dualism in alternative dispute resolution, namely LAPS as mandated by POJK and the Dispute Settlement Agency (BPSK) as regulated in the Consumer Protection Act. In this case, it becomes a separate problem for people who seek justice, certainty as well as conduciveness in business activities.
- b) Infrastructure that is still very limited is a challenge in itself where currently LAPS is only centered in Jakarta, even though the increasing number of submissions for dispute resolution should be directly proportional to the increase in service and infrastructure facilities where LAPS representatives must be located in all regions in Indonesia so that it is in line with the principle of accessibility or easy access as mandated in Article 28 paragraph (2) POJK No. 61/POJK.07/2020.
- c) The limited number of Arbitrators and Mediators at the Financial Services LAPS whose existence will determine the quality of the LAPS, so the number of mediators and arbitrators must be proportional to the ratio of the number of disputes submitted. (Kharisma, 2021)

4. Conclusion

Fintech plays a role as a supporter of community economic development in business financing through technology. Fintech is one of the innovations in the financial sector that refers to modern technology. This innovation aims to introduce practicality, ease of access, convenience and economical costs to make it easier for users. LAPS acts as a dispute resolution solution for business people in Indonesia. This institution was chosen because it is more effective and efficient. Decisions in LAPS are final and must be completed, in contrast to going through litigation, the decision by the Supreme Court is quite long, and the costs are also expensive. Moreover, with the rise of the legal mafia who could win one party in an unfair way which will increase the distrust of business people in solving the problem. Opportunities that LAPS can take advantage of in fintech to assist business development such as; the rise of e-commerce business and still need an institution to resolve disputes that are faced when a dispute occurs; LAPS is cheaper, faster and simpler; Compatibility in the dispute resolution process in the digital era that must be carried out effectively and efficiently; the solution is a win-win solution, which is in accordance with the character of the business world, which is obliged to manage risks, including reputation risk, operational risk and legal risk. Meanwhile, the challenges faced by LAPS in fintech include: The dualism of alternative fintech dispute resolution can be through LAPS and it can also be through the Consumer

Dispute Resolution Agency (BPSK); Limited Legal Infrastructure The number of fintech transactions continues to increase in line with potential disputes that will occur; Availability of LAPS Mediator and Arbitrator for Financial Services Sector.

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