



Freedom of Contract in Choosing a Financial Services Sector Consumer Dispute Resolution Forum

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Abstract

The choice of dispute resolution forum is a freedom for the parties contained therein. This includes Financial Services Sector Consumers who have the right to choose the forum. However, Law Number 4 of 2023 concerning Strengthening and Development of the Financial Services Sector has shifted this freedom for consumers which is only given to the Financial Sector Alternative Dispute Resolution Institution. This research aims to analyze the freedom of contract for consumers to choose a dispute resolution forum based on the principle of proportionality in an agreement. This research uses normative and doctrinal research. This research is conducted by examining literature or secondary data sourced from primary legal materials, secondary legal materials, and tertiary legal materials. The regulation regarding the dispute resolution forum in Law Number 4 of 2023 concerning Strengthening and Development of the Financial Sector does not in fact provide a freedom of contract for the parties therein. Given that choosing a forum is a basic right for consumers, it is better for business actors to provide all available dispute resolution forums. From the many choices of dispute resolution forums, consumers are given the right to choose a dispute resolution forum before agreements in the financial services sector are approved and electronically signed by consumers.

1. Introduction

Consumer dispute resolution is a crucial aspect of the consumer protection system that aims to ensure consumer rights are protected and fulfilled fairly. In the context of globalization and rapid digitalization, the dynamics of interaction between consumers and business actors are becoming increasingly complex. This gives rise to various potential disputes that require an effective and efficient resolution mechanism.

In Indonesia, consumer dispute resolution is regulated in Law No. 8 Year 1999 on Consumer Protection (hereinafter referred to as the Consumer Protection Law). Dispute resolution mechanisms can be pursued through the courts and out of court. There are two main institutions that play a role in out-of-court consumer dispute resolution and are the main focus of this study, namely the Consumer Dispute Resolution Agency (BPSK) and the Financial Services Sector Alternative Dispute Resolution Agency (LAPS SJK). The use of a non-litigation dispute resolution model

prioritizes a "consensus" approach and seeks to bring together the interests of the disputing parties and aims to achieve a "win-win solution" resolution, thereby achieving commutative justice.¹

BPSK is an institution established under the Consumer Protection Law and functions as an out-of-court consumer dispute resolution forum. BPSK has the authority to examine, adjudicate, and decide consumer disputes, as well as provide decisions that are final and binding. The effectiveness of BPSK is often hampered by various obstacles, such as limited human resources and infrastructure, as well as low awareness of consumers and business actors regarding the existence and function of BPSK.

On the other hand, LAPS SJK is the only institution established by the Financial Services Authority (OJK) specifically to handle disputes in the financial services sector, namely banking, capital markets, insurance, financing, pawnshops, venture capital, pension funds, guarantees, fintech and special financial institutions.² LAPS SJK functions as an out-of-court dispute resolution alternative that offers binding opinion mechanisms, mediation and arbitration. The presence of the LAPS SJK is expected to provide faster and more efficient solutions for consumers experiencing disputes in the financial services sector, given the complexity and specifications that exist in this sector.

Based on several research results, LAPS SJK is considered and positioned as a form of *lex specialis* from BPSK to handle disputes specifically between financial services business actors and consumers in the financial services sector. As stipulated in POJK Number 61/POJK.07/2020 concerning the Financial Services Sector Alternative Dispute Resolution Institution (hereinafter referred to as POJK LAPS SJK). This understanding arises because LAPS SJK has a specific mandate in the financial services sector. Although LAPS SJK specializes in the financial services sector, the conclusion that LAPS SJK is a *lex specialis* of BPSK is not entirely correct.

In the context of consumer dispute resolution, freedom of choice of forum is a fundamental right that consumers have. This right gives consumers the flexibility to choose the dispute resolution mechanism that best suits their needs and situation. The freedom to choose the forum between BPSK and LAPS SJK provides several advantages for consumers. After the enactment of Law No. 4 of 2023 on Strengthening and Development of the Financial Sector (hereinafter referred to as the PPSK Law), it authorizes Financial Sector Business Actors to choose dispute resolution between the LAPS SJK or the local District Court of the parties' choice.

Through this provision, BPSK is directly not part of the selection of alternative dispute resolution by the parties. As the selection clause is made in a standardized form following the rules stated in the PPSK Law. On the other hand, BPSK has the same

¹ Surya Irawan, Deny Guntara & Muhamada Abas, *Penyelesaian Sengketa Konsumen dan Kepastian Hukum Putusan Badan Penyelesaian Sengketa Konsumen*, *Collegium Studiosum Journal*, Vol. 6, No. 2, 2023, page. 376.

² Cited from <https://lapssjk.id/pendirian-laps-sjk/#:~:text=Lembaga%20Alternatif%20Penyelesaian%20Sengketa%20Sektor,di%20lingkungan%20sektor%20jasa%20keuangan>, Accessed on June, 10 2024.

authority as LAPS SJK to resolve consumer disputes, except that the scope of the sector is different. BPSK is categorized as a consumer dispute resolution institution with a broader scope, while LAPS SJK has a narrow scope and is only limited to the financial sector. Through the PPSK Law, the existence of BPSK as the preferred forum for resolving consumer disputes in the financial sector is displaced.

If the regulator then opens the opportunity to choose a dispute resolution forum including BPSK, this can realize the principle of freedom of contract in agreements made between consumers and BPSK. Agreements made between consumers and business actors always include a standard dispute resolution clause containing the dispute resolution forum and the law that will be used to resolve the issue. However, there is often a lack of common perception which creates obstacles in dispute resolution efforts.³ Often consumers are faced with conflicts over the selection of dispute resolution forums because of the standard clauses made by financial services sector businesses. The clause is different from the Customer Mandate Agreement between the Futures Broker and the Customer which allows customers to choose a dispute resolution forum.⁴ The implication of this freedom is that the customer consciously chooses a dispute resolution forum after being educated regarding dispute resolution through several dispute resolution forum options.

In the context of the relationship between consumers and business actors, they are always bound by an agreement. Indeed, the agreement between consumers and business actors is reciprocal in nature which cannot be ignored. The reciprocal relationship essentially makes the agreement between consumers and business actors give rise to two-way rights and obligations, so as to place consumers and business actors in a relatively balanced situation.⁵ At present, the reciprocal principle in agreements is often ignored due to differences in bargaining power between consumers and business actors because business actors have higher bargaining power than consumers. The emergence of agreements that tend to be one-way rights and obligations automatically places consumers to always fulfill their obligations, including choosing a dispute resolution forum that has been determined by the business actor in the dispute resolution clause.

Basically, an agreement is ideal if the bargaining position of the parties is proportional. Proportion in this case is not always related to the equality of rights and obligations obtained. An agreement is defined as proportional if the parties get a bargaining position that is in accordance with the needs of the agreement. This also applies to agreements between financial sector business actors and consumers who must get the same rights regarding dispute resolution forums.

Previous research was conducted by Afnan Misbachul Safly and Mustaklima entitled "Dualism of Authority to Settlement Consumer Disputes in Financial Services and Its

³ The Limitation in Choice of Law and Choice of Forum Within International Business Contract, Rizky Amalia dan Fairuz Zahirah Zihni Hamdan, *Internasional Journal of Social Science and Review*, Vol. 6, 2023, page 147.

⁴ Obtained from the document of the Commodity Futures Trading Arbitration Board, Commodity Futures Customer Trust Agreement, October 2024.

⁵ Johaness Gunawan & Bernadette M. Waluyo, *Perjanjian Baku: Masalah dan Solusi*, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, 2021, page. 19 - 23.

Implications for Legal Certainty in Financial Services Disputes." The results of this study indicate the existence of dualism of authority to resolve consumer disputes in the financial services sector arising from conflicting norms in the Consumer Protection Law, the OJK Law, and the PPSK Law. The implications of this dualism in resolving consumer welfare in the financial services sector for the principle of legal certainty in both the formal and material dimensions as a rule that protects consumer rights.⁶

The research shows that the PPSK Law actually creates overlapping jurisdictions for judicial resolution. The PPSK Law doesn't stop there; another issue that arises is the importance of a dispute resolution forum that doesn't prioritize freedom of contract in selecting an existing forum. This provision overrides the existence of BPSK as a dispute resolution institution that waives fees for consumers against all forms of products, both decisions and non-decisions. The consumer as a party to the agreement with the FSC in fact has the right to be able to choose a dispute resolution forum according to his ability. This will be in line with the principle of freedom of contract which should be the main principle in every agreement.

To improve the effectiveness of consumer dispute resolution in Indonesia, this research aims to further analyze the freedom of contract for consumers to choose a dispute resolution forum based on the principle of proportionality in an agreement.

2. Research Method

This research uses normative or doctrinal legal research methods. According to Terry Hutchinson, doctrinal research is a study that systematically describes certain legal categories of a regulation, analyzes the relationship between one regulation and another, describes problem areas, and potentially predicts future developments.⁷ This research is conducted by examining literature or secondary data sourced from primary legal materials, secondary legal materials, and tertiary legal materials.⁸ The type of research conducted is descriptive in nature that describes exactly how to guarantee consumer rights in the freedom to choose a consumer dispute resolution forum, and provides recommendations that can support the improvement of the consumer dispute resolution system in Indonesia. This research will also use a statute approach by examining regulations that are relevant to the legal issues that arise. The technique of collecting legal materials in this research is a document study by reviewing the information obtained. This research uses data analysis techniques that involve deductive logic, namely processing legal materials in a deductive manner, explaining general concepts before moving on to more specific conclusions.⁹

3. Results and Discussion

⁶ Afnan Misbachul Safly & Mustaklima, Dualisme Kewenangan Penyelesaian Sengketa Konsumen Jasa Keuangan dan Implikasinya Terhadap Kepastian Hukum Sengketa Jasa Keuangan, *Journal of Islamic Business Law*, Vol. 8, Issue. 3, 2024, page. 84.

⁷ P. M. Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), page, 32.

⁸ S. Soekanto dan S. Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT Raja Grafindo Persada, 2004), page, 14.

⁹ Johannes, *Op.Cit*, page 47.

The Consumer Dispute Settlement Body (BPSK) is a body tasked with handling and resolving disputes between businesses and consumers. There are several duties of BPSK, namely resolving disputes between business actors and consumers outside the court, either through mediation, conciliation, or arbitration. In addition, BPSK is also tasked with overseeing agreements with standard clauses, where BPSK can cancel such agreements that violate the provisions, based on agreement between consumers and business actors through mediation or based on arbitration decisions. BPSK is also tasked with providing education and consultation to consumers and business actors about their rights and obligations in accordance with applicable laws and regulations.

To ensure that BPSK's duties run effectively, it needs adequate budget support. With an adequate budget, BPSK can resolve consumer disputes fairly and efficiently, provide education to the public about their rights and obligations as consumers, and supervise business actors regarding their obligations. In addition, an adequate budget allows BPSK to improve the competence of its human resources through training, as well as improving facilities and technology for mediation and arbitration. Thus, an increase in the operational budget is key to ensuring that BPSK can fulfill its role optimally in protecting consumers.

Based on Article 49 of GCPL, the establishment of BPSK along with its budget authority lies with the Regency/City Government, however, since the enactment of Law No. 23/2014 on Regional Government, the consumer protection authority that was previously at the regency/city level has been transferred to the provincial level. As a result, the establishment of BPSK and its budget are now also the responsibility of the provincial government. The formation of this institution is intended to help consumers and business actors in resolving disputes.¹⁰

Based on the evaluation results of the 2017-2019 National Strategy for Consumer Protection (STRATNAS-Consumer Protection) and the identification of strategic issues, priority will be given to strengthening consumer dispute resolution institutions in the regions. This includes the establishment of BPSK in provinces that do not yet have such institutions and optimizing the performance of existing BPSK. At least by 2022, BPSK will have been established in 32 provinces or a total of 186 BPSKs spread throughout the region, and 2 provinces that do not yet have BPSK are West Sulawesi Province and West Papua Province. However, the picture above does not fully reflect the number of BPSKs operating each year. In fiscal year 2022, of the total BPSKs, only 70 BPSKs received an operational budget, while the other 116 BPSK did not receive a budget so they could not operate.¹¹

In the settlement of consumer disputes, it is carried out on the basis of the choice and consent of the parties concerned. The settlement of consumer disputes by way of conciliation and mediation is carried out in the form of an agreement made in a written agreement signed by all parties to the dispute. The settlement of consumer disputes is at the latest completed within 21 working days. Upon the decision, all parties to the

¹⁰ Rida Ista Sitepu & Hana Muhamad, Efektifitas Badan Penyelesaian Sengketa Konsumen (BPSK) sebagai Lembaga Penyelesaian Sengketa Konsumen di Indonesia, *Jurnal Rechten : Riset Hukum dan Hak Asasi Manusia*, Vol. 3, No. 2, 2021, page. 8.

¹¹ Annex to Presidential Regulation No. 49/2024 on the National Strategy for Consumer Protection.

dispute may file an objection to the District Court. For dispute resolution through arbitration, contain civil case decisions, which each decision contains a case accompanied by legal considerations.

In contrast to the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK) which has started to resolve disputes online or online dispute resolution, BPSK through the Ministry of Trade has just started to develop online dispute resolution by developing an online consumer complaint system. The online consumer complaint system is through the SIMPKTN portal, which will be followed up by the Ministry/Institution in accordance with its authority, and if a dispute occurs it will be resolved/facilitated by BPSK. The acceptance of consumer complaints can already use an online mechanism, but the settlement still uses a face-to-face mechanism.

The choice of dispute resolution forum is based on the agreement made between Financial Sector Business Actors and Consumers. This agreement is made in the form of standardized clauses. Clauses in an agreement are usually made by a party with a higher position and then offered to other parties. In the business context, clauses are generally made by business actors which are then offered to consumers. If the prospective consumer rejects the clause offer submitted by the business actor, then he will not get the desired goods or services. This often causes potential consumers to agree to clauses even though they are sometimes cornered and less assertive.¹²

In some literature, there are terms that are often used to replace standard agreements such as standard clauses, exoneration clauses, and exculpatory clauses. When connected with the terminology of standard clauses, it can be described that standard clauses are separate provisions that are fixed in an agreement, while exoneration clauses or exclusion clauses refer more to clauses that contain the release or exclusion of certain responsibilities. Standard clauses can also be defined as written clauses that are proposed and submitted to be stipulated without prior negotiation regarding their contents in an agreement.¹³

Standard clauses in the Consumer Protection Law are defined as: "any rules or provisions and conditions that have been prepared and determined in advance unilaterally by business actors as stated in a document and/or agreement that is binding and must be fulfilled by consumers. According to Prof. Johannes Gunawan, a standard clause can be understood as: "an agreement whose provisions are made unilaterally by a certain party, and which he will use to transact with many other parties with an interest in the same subject matter, in a position where one of the parties has little or no ability to negotiate the provisions so that he is placed in a position of 'take it or leave it'".¹⁴

According to Budi Agus Riswandi, generally agreements on the use of financial services sector products have been compiled and made into a standard by business actors which are then offered to consumers. The clauses in the agreement are not discussed with consumers. The standardization of clauses by business actors is often

¹² Zulham, *Hukum Perlindungan Konsumen Edisi Revisi*, Jakarta: Kencana, 2016, page 66.

¹³ Ahmad Fikri Assegaf, *Penjelasan Hukum tentang Klausula Baku*, Pusat Studi Hukum dan Kebijakan Indonesia (PSHK), Jakarta, 2014, page 12 -15.

¹⁴ Johannes Gunawan, *Op.Cit*, page. 27.

defined by experts as standard clauses and creates a take it or leave it situation for consumers.¹⁵

The Indonesian General Insurance Association (AAUI) has provided guidance on standard dispute resolution clauses to financial sector businesses. In the Indonesian motor vehicle standard policy, dispute resolution is carried out by first conducting deliberations within 60 (sixty) days. If no settlement is reached through the deliberation, then the insured can choose one of the dispute resolution clauses, namely through the Financial Services Sector Alternative Dispute Resolution Institution or settlement through a court in the territory of the Republic of Indonesia.

Based on the definition of standard clauses and the standard dispute resolution clauses suggested by AAUI, researchers conducted an inventory of standard dispute resolution clauses contained in several financial services sector agreements. The agreements consisted of two fintech borrower account creation agreements, five fintech financing agreements, six insurance policies, and two securities account opening agreements. In general, the online loan agreements and policies contain standard clauses related to dispute resolution, which vary as follows:

1. Online loan agreements:

In five loan agreements using fintech for the period 2022 to 2024, the dispute resolution clause offered is mediation through an alternative dispute resolution institution in the financial services sector registered with OJK.

2. Electronic insurance policy

The dispute resolution clauses in the six insurance policies refer to dispute resolution efforts preceded by deliberation within 60 (sixty) calendar days. In more detail, the dispute resolution clauses in the six policies are divided as follows:

- a) One Policy gives the insured the freedom to choose ad hoc Arbitration or the District Court where the Respondent resides.¹⁶
- b) Two Policies give the insured freedom to choose alternative dispute resolution (BMAI) or LAPS registered with OJK or through the District Court in the territory of Indonesia.¹⁷
- c) Two Policies provide the insured freedom to choose dispute resolution through ad hoc Arbitration or District Court in the territory of the Republic of Indonesia.¹⁸
- d) One Policy gives the insured the freedom to choose dispute resolution through LAPS SJK or through the District Court in the territory of the Republic of Indonesia.¹⁹
- e) One policy gives the insured the freedom to choose ad hoc arbitration or through the District Court where the agreement is made.²⁰

¹⁵ Teaching Materials for Consumer Protection Law, Budi Agus Riswandi, UII Publisher, 2022, page. 70.

¹⁶ PT Asuransi Artarino, "Ringkasan Pertanggungan untuk Proteksi Kerusakan +".

¹⁷ Insurance Policy Simas Insurtech "Flight Delay Protection" and Standard Motor Vehicle Insurance Policy BCA Insurance.

¹⁸ Insurance Policy Simas Insurtech "All Risk Movable Object" and Insurance Policy Simas Insurtech "All Risk Alat Elektronik".

¹⁹ Insurance Policy Zurich "Digital Travel Insurance".

3. Fintech Account Opening Agreement

The fintech account opening agreement stipulates that dispute resolution is only conducted through the LAPS SJK or through the District Court. In the agreement, consumers are limited to submitting to the jurisdiction of the South Jakarta District Court, but business actors have the right to initiate legal proceedings in other jurisdictions.²¹

4. Securities Account Opening Agreement

In one securities account opening agreement, consumers are not given a choice for dispute resolution because it has been determined that dispute resolution is only carried out through BAPMI (now LAPS SJK²²) arbitration.²³ Meanwhile, in another agreement, the consumer and business actor agree to submit dispute resolution through BAPMI (now LAPS SJK) or to the District Court where the business actor is located, which creates legal uncertainty and confusion regarding the choice of dispute resolution forum.²⁴

Freedom of contract is one of the principles in agreements regulated through Article 1338 of the Civil Code. The main idea of freedom of contract relates to an emphasis on consent and the intention or will of the parties. In addition, the idea of freedom of contract is also related to the view that contracts are the result of free choice.²⁵ The principle of freedom of contract is basically universal, meaning that it also applies in various treaty law systems in other countries that have the same scope.²⁶

Sutan Remi Sjahdeini concluded that the scope of the principle of freedom of contract is as follows:²⁷

1. freedom to make or not make an agreement / contract;
2. freedom to choose with whom he wants to make an agreement;
3. freedom to choose the causa of the agreement to be made;
4. freedom to determine the object of an agreement;
5. freedom to accept or deviate from optional statutory provisions.

²⁰ Indonesian Personal Accident Insurance Standard Policy AAJI.

²¹ Account Opening Agreement by Kredivo.

²² After the Capital Market Arbitration Board ("BAPMI") was dissolved, the role of BAPMI was then continued by the Financial Services LAPS (see Bacelius Ruru, et al. "BAPMI in the History of the Indonesian Capital Market", Pohon Cahaya, 2024 pp. 21 - 28). Since January 1, 2021 all agreements that still use dispute resolution clauses through alternative dispute resolution based on POJK 1 of 2014 are automatically transferred to the Financial Services Sector LAPS (see Article 47 POJK 61 of 2020).

²³ Securities account opening agreement of PT Profindo Sekuritas, taken from https://profindo.com/page/file/PERJANJIAN_PEMBUKAAN_REKENING_EFEK.pdf, accessed on October 24, 2024 Pk. 16.50 WIB.

²⁴ Securities account opening agreement of PT Victoria Sekuritas Indonesia, retrieved from <https://victoria-sekuritas.co.id/wp-content/uploads/2019/08/Formulir-Pembukaan-Rekening-Nasabah-IndividuWebsite.pdf>, accessed on October 24, 2024 Pk. 16.57 WIB.

²⁵ Ridwan Khairandy, *Kebebasan Berkontrak & Pacta Sunt Servanda versus Itikad Baik: Sikap yang Harus Diambil*, Yogyakarta: FH UII Press, 2015, p. 26.

²⁶ Ridwan Khairandy, *Hukum Kontrak Indonesia Dalam Perspektif Perbandingan (Bagian Pertama)*, Yogyakarta : FH UII Press, 2014, p. 87.

²⁷ Sutan Remi Sjahdeni, quoted through Ridwan Khairandy, *Indonesian Contract Law, Ibid.*

In its development, freedom of contract can lead to injustice because achieving the principle of freedom of contract must be based on the balanced bargaining position of the parties. Parties that have a higher bargaining position often impose their will. This higher bargaining position is often done by imposing restrictions.²⁸ Restrictions on freedom of contract can arise in such a way that the content of the contract can no longer be determined by the will or interests of (one of) the parties concerned, as one example of a standard agreement. The parties are no longer free to regulate their own reciprocal rights and obligations.²⁹

According to Sri Soedewi Maschoen Sofwan, restrictions on freedom of contract can occur as a result of:

1. the development of society in the socio-economic field;
2. the existence of government intervention to protect the public interest or weak parties;
3. the existence of a flow in society that wants social welfare.

Restrictions on freedom of contract on this subject matter can be found in one of the provisions of Law No. 4 of 2023 on Strengthening and Development of the Financial Services Sector (hereinafter referred to as PPSK Law). The Law regulates the strengthening of institutional authority and governance in Indonesia's financial services sector. One of the provisions is in Chapter XVIII Financial Literacy, Financial Inclusion, and Consumer Protection, as Article 245 paragraphs (1) and (2) reads:

- 1) FIs are required to have and implement a mechanism for handling complaints submitted by consumers;
- 2) In the event that there is no agreement on the results of the complaint handling carried out by the PUSK as referred to in paragraph (1), the Consumer may:
 - a. submit a complaint to the financial services authority for complaint handling in accordance with their respective authorities; or
 - b. submit the dispute to an institution or dispute resolution body that has received approval from the financial services authority or to the court.

Based on these provisions, the PPSK Law authorizes dispute resolution to an approved institution, in this case LAPS-SK (non-litigation) or the court (litigation). If it is related to freedom of contract, then the contract made by the parties must contain a choice of dispute resolution between the two. On the other hand, this clause overrides the existence of other dispute resolution bodies which are the *lex generalis* of the LAPS-SK, namely the Consumer Dispute Resolution Body (BPSK).

If we refer back to the provisions in the PPSK Law, BPSK is included in the dispute resolution bodies that can be chosen by the parties as long as they have received approval from OJK. This means that the choice of dispute resolution should be able to include the three institutions if it has met the requirements and is based on the freedom of contract of the parties in it. As mentioned earlier, freedom of contract includes the freedom to determine the causa in the agreement.

²⁸ Ridwan Khairandy, *Hukum Kontrak...*, Op.Cit, p. 88

²⁹ Herlien Budiono, *Asas Keseimbangan bagi Hukum Perjanjian Indonesia Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia*, Bandung : Citra Aditya Bakti, 2006, p. 108.

The principle of freedom of contract is a principle that occupies a central position in contract law, although this principle is not set out as a legal rule, it has a strong influence on the contractual relationship of the parties.³⁰ There are times when the development of freedom of contract can bring injustice due to the position of bargaining power regarding what is needed by other parties.³¹ This freedom of contract does not necessarily provide freedom for consumers to choose, as a result of the restrictions imposed by parties with higher bargaining positions. The restriction is made by the existence of standardized contracts in every agreement made in the ICC. Moreover, the use of standardized clauses in ICC agreements relates to the selection of a dispute resolution body that only provides room to choose LAPS-SJK or the Court.

Alternative dispute resolution through LAPS SJK and BPSK has differences in several aspects. At least, aspects that can be considered and compared between the two alternative consumer dispute resolution institutions are as follows:

Table 1. The Comparison Table

Aspect/Institutions	LAPS SJK	BPSK
Legal Basis	POJK 61/2020	Article 49 Law Number 8 year 1999 about Customer Protection
Aspects of Dispute Resolution Service Types	Mediation, Arbitration, Binding Opinion. the process of providing these services is not tiered.	Conciliation, Mediation, Arbitration
	Complaints filed by Consumers are not necessarily accepted and can be processed, because they require confirmation of willingness to mediate from PUJK (for mediation), cases filed are limited to civil cases which will be re-verified.	Complaints filed by consumers must be received by BPSK and will be processed. However, it often cannot continue because there is no common ground for arbitration through BPSK.
Aspects of Practice of Law	LAPS SJK is centralized in Jakarta, and generally conducts online mediation (ODR) and semi-online Arbitration processes. However, as of the date of this research, no binding opinions have been filed with the LAPS SJK.	BPSK is established in each regency capital or city area, and carries out conventional dispute resolution service activities.
Implementation Time Aspect	<ul style="list-style-type: none"> • Mediation can be conducted within 30 days and extended once the previous mediation period, and can be extended again after approval by the LAPS SJK board.³² • Arbitration is conducted within 180 days from the formation of the sole arbitrator or arbitral tribunal until the reading of the award, and can be extended according to the arbitrator's authority. • Binding opinions can be made within 84 days of registration. 	<ul style="list-style-type: none"> • Maximum 21 working days.
Aspects of Mediator & Arbitrator Competence	LAPS SJK has mediators and arbitrators with backgrounds from the financial services sector, and has categorized its	Consists of elements of consumers, business actors and government. BPSK has not yet classified and

³⁰ Andita Putri Nabila, Gunawan Djayaputra, Urgensi Pelaksanaan Kebebasan Berkontrak dalam Merumuskan Perjanjian Guna Mewujudkan Keadilan Bagi Para Pihak, *Unnes Law Review*, Vol. 6, No. 2, 2023, p. 4079.

³¹ Dwi Atmoko, Penerapan Asas Kebebasan Bekontrak dalam Suatu Perjanjian Baku, *Binamulia Hukum*, Vol. 11, No. 1, 2022, page. 82.

³² Article 13 of the Financial Services Sector Alternative Dispute Resolution Institution Regulation Number PER-01/LAPS-SJK/I/2021 concerning Mediation Rules and Procedures.

	mediators & arbitrators according to ability and background.	recorded the names of arbitrators, mediators, conciliators openly.
Cost Aspect	Mediation at LAPS SJK is divided into retail and small claims which are exempt from fees with a certain threshold in accordance with LAPS SJK fee regulations. Meanwhile, dispute resolution through arbitration or binding opinion will be charged a minimum fee regardless of the value of the dispute submitted. ³³	Free from any cost. ³⁴

The dispute resolution services provided by the LAPS have been reduced. The reduction refers to adjudication services that have been eliminated and not adopted by the LAPS SJK. At the Indonesian Insurance Mediation & Arbitration Agency ("BMAI") there is an adjudication service as a further stage if mediation conducted between consumers and insurance businesses does not reach an agreement.³⁵ Adjudication is a way of resolving disputes that will be decided by an adjudicator through a short examination process and making a decision that is directly binding on the insurance company (insurer), but for the consumer / policy holder (insured) will only be binding after he agrees to the adjudication decision.³⁶

The use of standard contracts is often debated to realize proportionality in an agreement. The principle of proportionality is defined as the principle that regulates the exchange of rights and obligations of the parties in accordance with their proportions or shares. This principle is contained in the entire contract process, both at the pre-contractual stage, contract formation and contract execution. The function of this principle in commercial contracts is in the pre-contractual stage to ensure the realization of a fair contract negotiation process. In the process of contract formation, it serves to ensure equal rights and freedom in determining the contents of the contract, while at the stage of contract implementation it serves to ensure the realization of the distribution of the exchange of rights and obligations according to their proportions.³⁷

Similarly, the selection of alternative dispute resolution in the PUSK agreement should be able to fulfill proportionality in it. Proportionality is not determined by the similarity or comparability of the number of clauses, but what is more important is whether the rights and obligations between them have been divided proportionally.³⁸ Proportionality is not "anti-rights", but rather open to the idea that rights can be determined in different ways, protecting contractual interests. Moreover, rights can be limited by a range of competing considerations, the proportions of which are

³³ Taken from <https://lapssjk.id/faq/>, accessed on October 24, 2024 Pk 19.36 WIB

³⁴ Retrieved from <http://bpsk.cirebonkab.go.id/badan-penyelesaian-sengketa-konsumen-bpsk#:~:text=Penyelesaian%20sengketa%20di%20BPSK%20tidak,kerja%20sudah%20diterbitkan%20putusan%20BPSK.>, accessed on October 24, 2024 Pk. 19.58 WIB.

³⁵ Mig Irianto Prabowo, Zabidin, Agnes Maria J. W., "Peran Badan Mediasi Dan Arbitrase Asuransi Indonesia (BMAI): Analisis Proses Dan Sifat Putusan", *Ganec Suara*, Vol. 17 Number. 4, December 2023.

³⁶ Jane Laura Simanjuntak, Kornelius Simanjuntak, "Alternatif Penyelesaian Sengketa Klaim Asuransi di BMAI dan LAPS SJK", *UNES Law Review*, Vol. 5 Number. 4, June 2023.

³⁷ Agus Yudha Hernoko, *Op.Cit*, p. 293.

³⁸ *Ibid*, p. 188.

acceptable in principle to both parties.³⁹ The scope and power of the principle of proportionality are more dominant in contracts with the assumption that both parties are in an equal position.⁴⁰

Consumers have so far accepted that the choice of dispute resolution is a fair proportion given the irreversibility of standardized contracts. The same is true for PUSK, which provides options based on the provisions in the PPSK Law. The enactment of the PPSK Law, especially the provisions regarding the settlement of financial sector consumer disputes, actually closes the opportunity for the parties to prioritize the universally recognized principle of freedom of contract. Agus Yudha Hernoko states that a fundamental error in understanding freedom of contract must be immediately straightened out and returned to the real rail of understanding. This principle places the contracting parties in a proportional position, this principle does not place the parties to face each other, drop and kill as “contract opponents”, on the contrary this principle places the parties as “contract partners” in the exchange of contracts.⁴¹

The application of the principle of proportionality to the PUSK and Consumer agreement is in fact intended to place both parties as contractual partners in the exchange of rights and obligations. Consumers have the right to know and choose a dispute resolution forum that can be pursued in the event of a dispute in the future. This restriction on the choice of dispute resolution forum or freedom of contract occurs due to the provisions of Article 245 of the PPSK Law, so that the choice of forum in the agreement does not reach the word “proportion” in it.

The emergence of disputes between business actors and consumers can cause losses for both parties. These losses can be even more widespread when not handled properly, leading to a loss of public trust in business actors. A clear example of the decline in public trust in business actors occurred in the period 2021 to 2023 where unit link consumers at that time were restless over the actions of financial service institutions in the insurance sector which caused many customers to lose their funds. Based on data released by OJK and the Indonesian Life Insurance Association, this problem is one of the significant causes of the massive closure insurance and makes the insurance sector's revenue from the sale of unit-linked products fall by more than 20%.⁴²

The incident then triggered OJK to temporarily suspend the sale of unit links to the public, and review the regulation of unit link sales.⁴³ Currently, there are two level regulations governing consumer protection efforts and consumer dispute resolution. In general, the principles of consumer protection and dispute resolution are regulated under Law Number 8 Year 1999 on Consumer Protection (UUPK) and specifically for

³⁹ Zhong Xing Tan, *The Proportionality Puzzle in Contract Law: A Law for Private Law Theory?*, *Canadian Journal of Law & Jurisprudence* XXXIII, No. 1, 2020, p. 237.

⁴⁰ Adelia Kusuma Wardhani, *Proporsionalitas Perjanjian dan Penyelenggara Securities Crowdfunding*, *Officium Notarium*, Vol. 2, No. 2, 2022, page. 207.

⁴¹ Agus Yudha Hernoko, *Op.Cit*, p. 101.

⁴² Obtained from <https://investor.id/finance/355005/premi-unit-link-turun-226-pada-2023>, accessed on October 24, 2024 Pk. 20.11 WIB.

⁴³ Agus Yudha Hernoko, *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Yogyakarta : Laksbang Mediatama, 2008, p. 101.

the financial services sector are regulated under Law Number 4 Year 2023 on Financial Sector Development and Strengthening (UU P2SK).

In both laws, there are similar regulations that state that consumers can choose dispute resolution efforts through the courts or out of court.⁴⁴ However, there are differences between the two regulations regarding out-of-court dispute resolution. The GCPL stipulates that consumers can choose to apply for dispute resolution outside the court, and the State only prepares the Consumer Dispute Resolution Agency ("BPSK") as an alternative. Meanwhile, in the P2SK Law, out-of-court dispute resolution can only be done through alternative institutions that have received OJK approval.

One of the rights of a consumer is to choose a dispute resolution forum for disputes between consumers and business actors. This right is an absolute right granted by the Consumer Protection Law. The right to choose a dispute resolution forum is then adopted by the P2SK Law which states that consumers in the financial services sector can choose to settle through the authorities in their sector, alternative dispute resolution, or through the courts. This freedom to choose a dispute resolution forum should not be limited by business actors through standard clauses that specifically determine one dispute resolution forum.

The dispute resolution forum offered by PUJK should not be absolute only through one dispute resolution forum. Although the standard agreement between the consumer and PUJK is made unilaterally by PUJK, in the standard agreement the consumer should be given the right to choose the dispute resolution forums offered. Providing this offer is a form of respect for the free will of consumers to choose a dispute resolution forum. The choice of dispute resolution forum is conveyed and explained to the consumer before he expresses his agreement in the agreement.

Researchers also conducted comparative research through account creation agreements related to the financial services sector, including five fintech financing agreements, five insurance policies, and two securities account opening agreements. In general, the agreement does not provide consumers with the option to choose a dispute resolution forum. Based on the results of discussions with an Arbitrator and an employee of the Commodity Futures Trading Arbitration Agency ("BAKTI"), in the commodity trading sector the parties are given the option to choose a dispute resolution forum. This shows that the freedom of contract to choose a dispute resolution forum is not fulfilled due to the regulations in the PPSK Law

In conventional agreements, customers can make elections by crossing out or checking the dispute resolution clause related to the dispute resolution forum to be pursued. Meanwhile, in the electronic agreement, the customer is given the option to check the selected dispute resolution forum, then the electronic agreement will be printed with the contents of the clause that has been chosen by the consumer. From this comparison, there is one process that is not provided in the financial services sector, namely the selection of a dispute resolution forum. Second, there is no adequate education regarding dispute resolution in agreements in the financial services sector prior to approval of the agreement offered. In fact, the process of providing consumers with a

⁴⁴ Compare Article 45 paragraph (2) of Law No. 8/1999 on Consumer Protection with Article 245 of Law No. 4/2023 on Financial Sector Strengthening and Development.

choice of dispute resolution forum will be in line with the true meaning of the principle of freedom of contract and the right to choose the dispute resolution forum that is considered most appropriate by the consumer.

On the other hand, providing a choice of settlement forums for consumers has its own practical implications. The practical challenge faced relates to the risk of consumer overload, which ultimately requires consumer education to make these choices more meaningful. Consumers' understanding of these options extends beyond simply comparing options; they must also understand that freedom of contract is intended to ensure fairness between the parties involved. Other challenges stemming from the settlement institutions themselves include the need for specialized expertise in financial settlements at the LAPS SJK and concerns about inconsistent decisions across various Financial and Asset Management Agency (BPSK), given their presence in each district capital.

4. Conclusion

The regulation on dispute resolution forum in the PPSK Law does not actually provide freedom of contract for the parties. Given that choosing a forum is a basic right for consumers, it is better for business actors to provide all available dispute resolution forums. From the many choices of dispute resolution forums, consumers are given the right to choose a dispute resolution forum before the agreement in the financial services sector is approved and electronically signed by the consumer. Providing all dispute resolution forum options for consumers will provide more access to justice, while maintaining proportionality between business actors and consumers. On the other hand, the fulfillment of proportionality is expected to be able to provide more protection to consumers and slightly equalize the position of consumers and business actors, although not to the stage of being truly equal.

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