LEGALITY: JURNAL ILMIAH HUKUM

Journal homepage: http://www.ejournal.umm.ac.id/index.php/legality

Inconsistency in Freedom of Contract for Banking Dispute Resolution in Indonesia

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Article

Keywords:
Inconsistency; Freedom of Contract; Banking; Dispute Resolution.

Article History
Received: Apr 16; 2024;
Reviewed: Apr 17, 2024;
Accepted: Jul 2, 2024;
Published: Jul 2, 2024.

Abstract

This research interprets the manner and existence of contradictions in POJK No. 61/POJK.07/2020's declaration regarding the freedom of contract while choosing banking dispute resolution forums. Primary and secondary legal materials comprise most of the secondary data in this normative legal study. The information was gathered from the literature and examined using analytical and interpretive methods. The study's findings emphasised how Indonesian banking dispute resolution forums are chosen inconsistently with the idea of freedom of contract. The findings demonstrated the necessity of legal harmony in rulemaking to guarantee the coherence and consistency of all legal principles underlying different laws. This article argues that legal harmony is essential for aligning various legal concepts across diverse regulations and significantly contributes to the identification of the policy's inconsistency, which restricts the ability to choose a banking dispute settlement venue without restriction. The findings of this study may provide the basis for more research on how the policy affects banks and their clients. The findings could also be used as a reference for policymakers to improve the current policy and to ensure that the principle of freedom of contract is preserved in banking dispute resolution. Overall, this research provides valuable insights into the current policy and its impact on the banking industry in Indonesia.

INTRODUCTION

Differing opinions on banking goods and services may rise to disagreements between clients and financial institutions (Al Amaren & Al-Husban, 2024). The disagreement may also arise from an illegal act or a breach of contract. Disputes within the banking services sector are relatively high compared to other financial services

industries. According to Syamsudin, consumer complaints against banks comprise 62% of cases involving mortgage auctions, 32% of cases involving credit agreements, and just 5% of cases involving disputes over non-banking goods and services. To keep customers' trust, banks need to handle complaints quickly. Long-term benefits would result from prompt customer problem resolution (Matteo Cotugno & Stefanelli, 2022) to give the parties protective legal measures both in advance and in the aftermath of a conflict (Alauddin et al., 2021). The fact that Law Number 7 of 1992 and Law Number 10 of 1998 both pertain to banking further demonstrates the government's political will to support bank clients.

Conflicts of interest arise between the parties regarding profit sharing due to cooperation (Arfan et al., 2024). By selecting the most profitable portion for them, each partner would attempt to achieve the objective (Kokorin, 2021). A rule that establishes a consensus regarding the appropriate allocation of rights is necessary for the distribution of resources and benefits in society. According to Eleftheriadis (2020), this justice principle can allow for the fulfilment of duties and rights and the equitable distribution of rewards. Civil contracts, such as those in the banking industry, operate under the tenet that it is the business and prerogative of the parties to carry out the fulfilment of their respective rights (Arifin, 2018). If they do not have a direct legal interest, other parties or even the government are not allowed to interfere with the parties' rights. The parties' entire rights may (or may not) be asserted in court by those whose rights have been infringed by third parties. The parties are free to choose their independent forum for the settlement (option of forum) and have the authority to do so (Leary, 2021).

An open system has been utilised to settle civil disputes, particularly those involving financial contracts (Gibbs et al., 2022). As a result, the parties are granted the option to choose the forum to be utilised to resolve disagreements about contracts between the parties, which is subject to the freedom of contract concept (Marwa et al., 2023). Financial Services Business Actors (*Pelaku Usaha Jasa Keuangan*/PUJK), coordinated by financial services associations, including banking, are required to establish an Alternative Dispute Settlement Institution for Financial Services Sector (*Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan*/LAPS SJK), following *Peraturan Otoritas Jasa Keuangan* (POJK) or Financial Services Authority Regulation of the Republic of Indonesia Number 61/POJK.07/2020 concerning Alternative Institutions for Settlement of Financial Services Sector Disputes.

Regulation Number 1/POJK.07/2014 of the Financial Services Authority of the Republic of Indonesia regulating Alternative Dispute Settlement Institutions in the Financial Services Sector is superseded by this new regulation. The new law essentially requires a single LAPS SJK in the financial services sector in Article 6, although the previous regulations permitted LAPS SJK to be present in several financial sectors. Since banking contracts that have been made and standardised will supersede the

customer's right to choose the dispute resolution forums, these provisions will undoubtedly lessen the meaning of freedom of contract when deciding which forums should be owned by customers or banks (Hidayat et al., 2022).

Studies examining the inconsistent application of the principle of freedom of contract in the choice of financial dispute resolution forums have not yet been discovered, particularly in the wake of the publication of POJK No. 61/POJK.07/2020. Studies (Biard, 2019; Reichard, 2020; Syamsudin, 2021) have examined the relationship between the principle of freedom of contract and the resolution of banking disputes in and out of court. However, the research has not focused specifically on the concept's contradiction. By concentrating on the examination and interpretation of the principle of freedom of contract and the selection of banking dispute resolution venues, this study seeks to supplement earlier research. This discrepancy arises because it regards the Financial Services Sector LAPS SJK as the exclusive entity with complete jurisdiction over settling conflicts between banking services PUJKs and clients.

METHOD

This study employs a normative legal research approach (Ansari & Negara, 2023) with a descriptive qualitative methodology (Al-Fatih, 2023), utilising secondary data that includes primary legal materials such as banking laws, alternative dispute resolution and arbitration laws, and civil codes. Secondary sources such as relevant scientific articles also form part of the research materials. The study begins by identifying key principles in contractual agreements, particularly focusing on banking dispute resolutions. It critically examines the principle of contractual freedom against the regulations set by the Financial Services Authority (OJK). The analysis revealed inconsistencies within the OJK regulations that contravene this principle. Moreover, the study conducts an analytical comparison to ensure that legal norms do not contradict higher legal directives. It uses positive legal analysis to demonstrate that OJK regulations restrict the choice of dispute resolution forums, mandating predefined options. This research identifies issues in policy-making and the legislative process, highlighting the necessity for a strong and logically sound rationale in formulating laws and regulations.

Two factors served as the foundation for this study. First, the fundamental and significant civil law principle of freedom of contract must not stray from the business sector's rule of law. Second, there is a need for the resolution of banking disputes to be conducted consistently, amicably, and in compliance with all relevant legal regulations. Using secondary data from a literature review utilising both primary and secondary legal materials, this research is normative legal (Gorobets, 2020). The Civil Code (BW), Law Number 48 of 2009 concerning Judicial Power, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and POJK No.

61/POJK.07/2020 are the main sources of legal information. The written works of pertinent specialists, as well as theory, expertise, and opinions, constitute secondary legal documents. Secondary data is gathered through literature research by means of systematic data identification, classification, and search operations. Following data collection, an analytical technique and interpretation are used to classify, identify, and define the principles of contract law as standards of conduct when creating agreements, particularly when deciding which forum agreement to use for resolving disputes.

RESULTS AND DISCUSSION

In choosing the financial dispute resolution forums in Indonesia, the research presents a discussion centered around the principle of freedom of contract. The research uses a normative legal research approach, which relies on secondary data such as primary and secondary legal materials. The data is analysed using an analytical and interpretive approach to identify inconsistencies in applying the principle of freedom of contract in the banking industry. The study concludes that Indonesian banking dispute resolution venues are not consistently chosen based on the principle of freedom of contract. This contradiction restricts the contractual freedom to select a forum for dispute resolution, which is against the fundamental idea of contractual freedom. According to the research, when creating rules, legal harmony is necessary to guarantee that all legal tenets of the different laws align. In financial dispute settlement, this would support the preservation of the freedom of contract principle. The study emphasizes the importance of pinpointing the policy's contradiction, which restricts the contractual freedom to select a banking dispute resolution venue.

The findings could serve as a foundation for future studies in exploring the effects of the policy on the banking industry and its customers. Additionally, the research could be used as a reference for policymakers to improve current policies and ensure that the principle of freedom of contract is preserved in banking dispute resolution. Overall, this research provides valuable insights into the current policy and its impact on the banking industry in Indonesia. The research highlights the importance of legal harmony in making regulations to ensure that all legal principles are aligned and consistent. The findings could contribute to improving current policies and ensure that the principle of freedom of contract is preserved in banking dispute resolution.

Restrictions on the Application of Freedom of Contract

Three fundamental ideas underpin civil law: commensalism, binding force of contract, and freedom of contract. "The moral force behind contract as promise" is how Sharma describes the freedom of contract. The Civil Code's Article 1338 attests to all agreements being legally obligatory on their parties. As long as the agreement is

made lawfully, this clause serves as the cornerstone of the freedom of contract principle.

Numerous nations have acknowledged the notion of freedom of contract in their treaty theories. Freedom of contact is a key concept in contract law in nations that uphold common law and civil law systems. However, the state has limited the use of the freedom of contract through legislation and case law. This restriction results from various developments, such as the theory of economic law (Anggia et al., 2023), standard contracts, the doctrine of abuse of circumstances, and the notion of good faith. This limitation is put in place to ensure that contracts do not violate other people's rights (Flanigan, 2017).

Freedom of contract is a consequence of applying the principle of contract as a law, which has positive and negative meanings (Cohen, 1995). The ability of the parties to freely form agreements and bind them at will is the positive definition of freedom of contract, and the parties' will be what gives rise to a contract. In the negative sense, freedom of contract indicates that neither party is subject to responsibilities if there are no regulations in the legally binding contract. This implies that if anything is not included in the contract, neither party to an agreement is obligated to follow its terms. This is the reason behind the restrictions on exercising freedom of contract. As long as it does not conflict with good faith, decency, or public order, the parties are free to make or not make an agreement, begin planning an agreement with anyone, decide on the agreement's form—verbal or written—and even freely choose how the agreement is implemented (Gelpern et al., 2019). If it is tied to other principles, the principles of commensalism and binding power are connected to the formation of the agreement, legal ramifications, and the substance of the agreement, respectively.

Contract law mentions two important terms: freedom of contract and autonomy of will (Alhasni Bakung et al., 2022; Dagan & Heller, 2021). There are variances in the two explanations of the parties' freedom to engage in a contract. While freedom of contract refers to a legal, political statement aimed at individual freedom to exchange rights, autonomy of the will is a legal theory considering free will as a medium of exchange for legal rights. The fundamental tenet of the freedom of contract is that agreements are created out of nothing or as a reflection of the parties' free will. Since the contract is the contractors' sole prerogative, it is up to the parties to decide whether to make one. The will of the parties to make an agreement is a manifestation of legal action, which then creates their respective rights and obligations.

The fundamental presumption underlying the freedom of contract principle is that the parties' agreement reflects a balanced bargaining position (Sudarwanto et al., 2021). If the parties under the contract have a balance of mutually beneficial positions, then freedom of contract will function effectively. As Hrynyuk and Hotsuliak (2021) point out, the parties do not always share the same negotiating position. Those in stronger bargaining positions typically subjugate those in weaker positions. As a result, there are

now several arguments against the traditional conception of contractual freedom, which ignores the relative strength of the parties' negotiating positions. Since then, a new perspective of contractual freedom has surfaced. Although contractual freedom has limitations, it does lead to a paradigm of propriety-based freedom (Hollander, 2016).

Therefore, contract freedom has two separate and significant aspects (Enman-Beech, 2021). First, if an obligation is not founded on an agreement, the freedom of contract rules that the individual does not have a contractual responsibility. Second, depending on the two parties' legal agreement, the freedom of contract establishes who is in charge. To put it briefly, the authority and rights of the parties will arise from a contract based on an agreement, and vice versa.

Standard agreements in business activities and their relationship with the principle of freedom of contract

There is a constitutional component to the state legal system's dispute resolution forum selection (Luchtman, 2011). In any conflict resolution, the choice of forum is used to produce a business contract that is efficient, straightforward, and reasonably priced. The Law Number 30 of 1999 concerning Arbitration and other Dispute Resolution is an encouraging piece of Indonesian legislation that strengthens the availability of other forums to resolve disputes. Since not every disagreement may be settled by a peace agreement, the parties are allowed to select a different forum (choice of forum) for resolving conflicts. The provisions of the applicable legislation and the court with jurisdiction to decide the dispute must be followed by the parties if they are unable to agree on a dispute resolution procedure (Kur, 2021; Ratna et al., 2022).

For business actors, standard agreements in commercial activities have evolved into a new custom (Bobkov, 2018). Generally, a standard agreement is acceptable if it abides by contractual freedom. If a standard agreement demonstrates the principles of justice, balance, good faith for the parties, and legal clarity, then it can be said that it does not contradict the principle of freedom of contract. This must be guaranteed as a safeguard for clients typically in a poor bargaining position (Callison et al., 2018). As the primary consumers of the banking business, the banking sector is made up mostly of creditor and debtor customers. Standard agreements created and prepared by banks serve as the basis for banking transaction contracts, including credit agreements and other financing arrangements. There is no application of the consensual concept in the agreement between the bank and the consumer through the bargaining process. Naturally, the only option available to clients is to adhere to the terms stated in the standard agreement (Gibbs et al., 2022).

The parties are free to include provisions pertaining to the choice of forum outside the court, such as mediation, conciliation, or arbitration, for the resolution of disputes

that arise between the parties as a result of the existence of national and international trade agreements (Fras, 2019). The parties' agreement on the forum chosen is founded on the *pacta sun servanda* concept that governs both parties and serves as the foundation for settling conflicts. Currently, online conflict settlement (ODR) is being developed as an alternate conflict settlement method conducted online (Ojiako et al., 2018).

Effective and efficient execution of financial dispute resolution is the ideal scenario. The basic banking agreement contains a language allowing the parties to choose a forum for dispute settlement. The parties have the independent right to decide how to settle their disagreement, whether through litigation or non-litigation (Oliveira, 2017). The state is powerless to meddle or intervene. The legal system needs to offer legal protection to those who choose dispute resolution platforms on their own. The state must honour each person's preference for a particular forum. One way the parties might exercise their freedom to choose the law governing the implementation of the agreement is through the choice of forum. In other words, the freedom of contract principle is inextricably linked to the forum selection. The contractual freedom principle is the foundation for choosing venues for civil law dispute resolution. The decision to create the contract agreement rests with the parties entitled to settle disagreements per the terms of the choice of forum. Even the parties are allowed to exercise the freedom granted by taking legitimate reasons and good faith into account. This highlights even more how the option of a dispute resolution forum is implemented based on the principle of freedom of contract or the autonomy of the parties (Baddeley, 2020).

The parties can use either the *pactum de compromitendo* or the *acta compromais* to agree on the choice of a conflict resolution setting through mediation, conciliation, or arbitration (Minto et al., 2021). This is an alternative to dispute settlement outside court (Fagbemi, 2016). *Pactum de compromitendo* refers to an agreement in which the parties make the main agreement and include an alternative clause prepared in case of a dispute in the future in which the parties have determined an alternative dispute resolution; *acta compromis*, on the other hand, refers to a clause made after a dispute arises between the parties (Leary, 2021). However, the parties' rules for selecting a forum for dispute resolution are only recommendations and are not required. The parties are not legally required to specify the forum selection in the agreement. The contract's provisions on the choice of setting may be altered if there is an optional legal clause.

The Limitation of Alternative Dispute Resolution Options

The conception implies that each party has the independent right to choose the forum to resolve their disagreement and that no other party may interfere. POJK No. 61/POJK.07/2020 has rules that go against the fundamental idea of contractual freedom. According to Article 1 Number 1, LAPS SJK is an organisation that, at the

very least, offers mediation and arbitration services to settle disputes in the financial services industry, including banking, outside of court. According to Article 6 POJK No. 61/POJK.07/2020, 1 (one) LAPS SJK is responsible for handling the out-of-court resolution of financial disputes on behalf of all Financial Services Business Actors (PUJK). This clause aims to highlight that, while customers who are unable to resolve their disputes with financial service institutions may apply for settlement to other institutions that have been formally established in the past, the only other choice of dispute resolution forum outside of the court is LAPS SJK. Still, this provision will further confirm the existence of LAPS SJK and can reduce the existing alternative dispute resolution institutions.

The fact that LAPS SJK is the exclusive organisation for out-of-court conflict settlement indicates that the parties are unable to arbitrate their disagreements in other forums. It is believed that the banking sector's PUJK would include a forum choice clause in standard agreements that follow POJK No. 61 / POJK.07/2020. Therefore, customers with a weak bargaining position are left with no choice but to join the organisations established by the PUJK.

Absolute Choice of LAPS SJK Restricts Parties from Choosing Other Institutions

LAPS SJK holds a position in people's choices as the exclusive financial industry dispute resolution institution (Ningsih et al., 2022). Nonetheless, there have been objections to LAPS SJK's existence. Understanding these three notes about this institution is necessary. First, LAPS SJK's dispute resolution process does not have a very high success rate. The case completion rate from January 1, 2021, to December 31, 2023, may be associated with this rate. There are 5,650 conflict complaints, but only 838 of them have been resolved through mediation, and 15 cases have been arbitrated (LAPS SJK, 2023). As the sole dispute resolution institution, the LAPS SJK has been demoted by the numbers. People may become less trusting of LAPS SJK as a place to file complaints and resolve disputes. It is necessary to incorporate the willingness and good faith of the financial institution and the individuals involved if this institution is positioned as the only legal body to settle financial disputes (Ulinihayati & Husein, 2022). For the parties to resolve their financial dispute in a fair, timely, and transparently, they must pledge to adhere to the procedures that LAPS SJK offers through mediation, arbitration, or other means, with integrity and goodwill.

Second, people's participation in contracts has been restricted in some way by LAPS SJK's exclusive legal standing in financial dispute settlement. The Indonesian Civil Law's Article 1338 on freedom of contract has a more limited definition now that LAPS SJK is in place. The people are forced to accept this LAPS SJK as the only organisation to resolve their disagreements going forward due to its existence. The nomination of LAPS SJK is also unproductive because it restricts the range of financial

dispute resolution through non-litigation methods. Consequently, it goes against resolving civil disputes outside of court rather than through other channels. Should this LAPS SJK remain unchanged, it may result in an increase in financial disputes resolved through litigation (Pratama, 2023). As a result, win-lose settlement procedures are replacing win-win ones.

The potential for a conflict of interest is the third point. The member of LAPS SJK is hired from PUJK, under Article 11 of POJK No. 61/POJK.07/2020. As far as we are aware, PUJK is connected to the financial institutions industry. Even though it has been decided that those incorporated into LAPS SJK will not serve as arbiters or mediators in specific financial cases, there remains a conflict of interest since they are not impartial or will potentially bring about an unfair legal result in this regard. This is because PUJK's membership in LAPS SJK and PUJK itself provide the funds for LAPS SJK's sustainability. From that perspective, it makes sense to assume that the LAPS SJK ruling may have been a non-objective legal ruling.

Furthermore, POJK No. 61/POJK.07/2020 inconsistently selected banking dispute resolution forums based on the principle of freedom of contract. The notion of freedom of contract in the regulation is inconsistent for at least four reasons. First, the PUJK and customers' ability to select the forum has been restricted by the LAPS SJK's status as the sole out-of-court dispute settlement forum (option of forum). Because PUJK forms the dispute resolution forum provided in Article 6, it is in a very beneficial position relative to customers. Second, the parties are prohibited from selecting any other institution by the LAPS SJK, which is an absolute decision. Institutionally, it has to exercise its powers, responsibilities, and authority impartially and autonomously. In the meantime, Article 8 paragraph 3 letter (c) attests that the association-coordinated PUJK established the LAPS SJK legal entity.

Third, the LAPS SJK's independence, fairness, and authority may be diminished as a result of the PUJK's creation of the organisation as a participant in banking disputes with clients, which would ultimately be detrimental to clients. Fourth, the LAPS SJK legal entity's institutional organs and authorities are outlined in Article 8 paragraph (3) letter (d), Article 12, Article 16, and Article 18 of POJK No. 61/POJK.07/2020. These include a general meeting of members, management, and supervisors. It is clear from these regulations that PUJK, as the organisation's founder and member, has a strong position in the general meeting of members, which decides on issues like the association's articles of association, the appointment, replacement, and dismissal of management and supervisors, as well as finances for LAPS SJK.

Inconsistencies can take several forms in the Principle of Freedom of Contract in the Selection of Banking Dispute Resolution Forums and their underlying causes. First, the Financial Services Institutions resolve disputes pertaining to banking (LJK). It is mandatory for every LJK to possess a functional work unit that can address consumer complaints. The customer may choose to settle the disagreement through non-

litigation or litigation if the LJK dispute resolution process cannot produce an agreement. The settlement process varies depending on the forum (Risch & Risch, 2022). Court-resolved disputes are typically formal and governed by the relevant state law. In the meantime, the agreement of the parties, including through the LAPS SJK, serves as the foundation for the settlement of issues outside of court.

The disputing parties initiate the LAPS SJK dispute resolution procedure by submitting a request. Following the customer's application submission, LAPS SJK will check the supporting documentation. The confirmation that the application has been accepted will be the following step. The choice or appointment of a mediator, arbitrator, or adjudicator will be made before the dispute resolution procedure is used if confirmation has been received. Arbitration, adjudication, or mediation are used as dispute resolution methods. The execution of the agreement's provisions, which LAPS SJK will oversee, comes once the dispute resolution procedure produces an agreement. In summary, the dispute resolution procedure carried out by LAPS SJK can be seen in Figure 1.

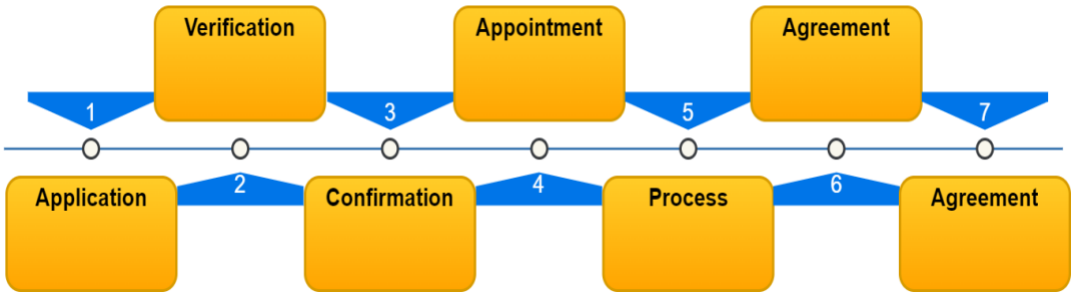

Figure 1. Dispute Resolution Procedure of "LAPS SJK"

There are two main legal foundations upon which the legitimacy of the freedom of contract is founded. Firstly, the terms the parties may agree upon are not restricted by the legal concept. According to this principle, the parties must be allowed to freely decide what should be included in the agreement, so long as it does not conflict with any relevant legal requirements (Turvey, 2018). Second, the idea is that a person cannot be legally compelled to agree; therefore, the parties independently decide whether or not to agree (Gabov & Cherkesova, 2021).

One way that Article 6 restricts the parties' freedom of contract is by limiting their ability to choose the LAPS SJK as the forum for dispute resolution. This is particularly problematic for clients in the financial services industry. Nonetheless, the government's attempts to mandate a single point of contact for integrated disputes in the banking and non-bank financial sectors are commendable. The Indonesian Banking Dispute Settlement Alternative Institution (LAPSPI), the Indonesian Capital

Market Arbitration Board (BAPMI), the Indonesian Insurance Arbitration Mediation Agency (BMAI), the Pension Fund Mediation Agency (BMDP), the Guarantee Company Mediation Agency of Indonesia (BAMPPI), and the Indonesian Financial, Pawnshop and Venture Mediation Agency (BMPPVI) are the six (six) LAPS SJK in Indonesia (Huda et al., 2017). Due to the fact that customer disputes with PUJKs entail cross-sectoral dispute objects, multiple LAPS SJKs have handled them so far. As a result, the LAPS SJK mediator or arbitrator can now handle cross-sectoral issues centralised in LAPS SJK in a more ideal, impartial, and effective manner due to this new rule. This undoubtedly represents a standardisation of the financial services industry's dispute settlement process.

LAPS SJK is founded by PUJK, which is managed by associations in the financial services sector and/or Self-Regulatory Organization (SRO), according to Article 8 paragraph (3) letter (c) of POJK No. 61/POJK.07/2020. This clause reinforces how consumers' flexibility to select impartial and independent dispute resolution forums is restricted. Customers may doubt the impartial dispute resolution service described in Article 2 letter (a) if a PUJK or association established the LAPS SJK. Customers are compelled by this clause to select a dispute resolution venue established by the commercial actors themselves. Other than using the offered forum, the customer has little control over which other forums they choose to use. There is no other option for enterprises regarding the dispute resolution forums except to adhere to POJK No.61/POJK.07/2020. According to Article 11, PUJK must pay membership dues and join LAPS SJK. The two requirements are obligatory and enforceable, and breaking them will result in administrative penalties, including written warnings, fines with a payment deadline, business activity limitations, and business activity suspension.

Article 8, paragraph (3) letter (c), Article 11, and Article 43 rules strengthen PUJK's negotiating position relative to clients. The fundamental principles of the freedom of contract, which state that the parties shall have a balanced bargaining position, are not adhered to by PUJK and the customer's uneven bargaining position. This may result in the banking dispute settlement process's conditions being abused. Both positional advantage and state of economic advantage can lead to the misuse of circumstances. Measures used to determine whether misuse of circumstances occurred include a party's use of an opportunity during the agreement period and a party's loss (Sudarwanto et al., 2021).

According to POJK No. 61/POJK.07/2020's Article 8 Paragraph (3) Letter (d), LAPS SJK is a legally recognised association with at least an organisation, general assembly of members, supervisors, and management. The highest authority, not granted to management or supervisors, is held by the general meeting of members, who may: a) set the organisation's bylaws and amend them; b) appoint, remove, and replace management and/or supervisors; c) request information from management and/or supervisors to carry out their respective duties; d) decide on the management

and supervisors' salaries, allowances, and/or honoraria; e) approve the annual work plan and budget, including membership dues; f) establish public transportation; and g) evaluate and approve the annual financial report, management and supervision. The Financial Services Authority has defined and limited the authority of the general assembly of members, yet LAPS SJK has rather significant authority. Nevertheless, if the resolution of the general assembly of members could jeopardise the interests of LAPS SJK or violate legal or regulatory restrictions, it shall be revoked.

As a member of LAPS SJK, PUJK has a very strong standing. Naturally, this may impact LAPS SJK's ability to perform their tasks. PUJK may utilise this circumstance to uphold its intention to select the forums for dispute resolution based on previously created standard agreements. The delicate balance between the two parties may be upset by PUJK's favourable power over the validity of legislation and regulations pertaining to LAPS SJK. One of the requirements for a contract's legality is the existence of free will to create an agreement (Fia & Sacconi, 2019); however, since the POJK No. 61/POJK.07/2020 stipulation, this has not happened in the out-of-court resolution of banking disputes.

Given that the concept of freedom of contract is now understood to have a relative rather than absolute meaning, the public interest and good faith must nevertheless come first in implementing this principle. Stated differently, the principle of freedom of contract needs to sustain a balance between the interests of society and the interests of the individual. The government's authority over the Financial Services Authority should adequately control or exclude the requirement to select a dispute resolution venue at a specific settlement institution, like the LAPS SJK founded by the PUJK, as this goes against the freedom of contract principle.

The occurrence of inconsistencies in the contractual freedom principle in the choice of banking dispute resolution forums.

Every person is essentially free to choose with whom to enter into an agreement, according to Article 1338 paragraph (1) of the Civil Code, which serves as the foundation for applying the idea of freedom of contract and represents the ability to choose the format and substance of the agreement as well as the law, forum, and dispute resolution method (i.e., jurisdiction) (Rutgers, 2017). This notion demonstrates that the parties' bargaining positions in a contract must be balanced. The freedom of the parties to select the forum has been restricted due to LAPS SJK's status as the exclusive forum for all PUJK. This clause runs counter to the fundamental idea of contractual freedom, which places an emphasis on the parties' consent, their free will, and their comprehension that the contract is the product of their free will. The fundamental tenet of common law and civil law nations continues to be that each party is free to choose the terms of the contract when entering into a civil agreement. As long as it conforms with legal provisions, the principle of freedom of contract can be

implemented unconditionally (Tasalov, 2019) This involves a) adhering to the terms of the agreement, b) not breaking any laws, c) not interfering with custom; and d) being carried out in a sincere effort. The core idea of settling civil issues outside of court is open, allowing it to be utilised as a model. The parties can choose the forum where they would like the dispute to be settled. Insofar as the parties can carry out contract litigation, they are also free to enter a contract.

The open nature of contract law serves as a justification for the choice of forum's implementation. In other words, the parties decide the substance and method of dispute settlement freely (freedom of contract). However, like a law, the agreement must be enforceable and legal between the parties. The fact that it is partially open and free—rather than entirely open and free—must be taken into consideration by the parties. Binding law refers to the legal provisions of an agreement unbreakable by the parties.

Regarding the LAPS SJK established by the PUJK, there are issues, specifically with the basic agreement's inclusion of a dispute resolution forum choice clause. Adhesive standard agreements diminish the notion of freedom of contract by compelling one side to acquiesce. Typically, the standard agreement gives the party agreeing more power (Bobkov, 2018). As a result, one of the agreement's parties is compelled to sign it, or their negotiating position deteriorates. Since PUJK is better positioned to force its will on LAPS SJK and its clients, it can take advantage of this circumstance. Ultimately, it will upset the parties' equilibrium when selecting a forum for conflict settlement. The enforcement of contract freedom must simultaneously preserve the acknowledgement of the balance of the parties' bargaining positions, particularly for the customer as the party with the weakest bargaining position (Lombard, 2021).

Maintaining the equilibrium of the parties' bargaining positions is the optimal way to settle civil disputes. Experience demonstrates that this is not always the case and that one party's balanced negotiating position may not always benefit the weaker party. This fact resembles the traditional contract law approach, which disregards the parties' bargaining positions. As a result, the law must be applied consistently. To achieve harmony between legal principles and the rule of law, policymakers, in this instance, the Financial Services Authority should pay attention to the principles of drafting legal regulations. It is also necessary to harmonise the law to provide a foothold to align with the hierarchy of laws and regulations. This prevents norms from colliding when the law is applied in society. The rules are created through legal harmonisation to foster public trust since they represent the presence of certainty and legal order in society. However, if the regulations are created inconsistently, legal voids will deny society legal certainty.

CONCLUSION

The choice of forum for resolving financial disputes under POJK No. 61/POJK.07/2020 is inconsistent with the idea of freedom of contract. This type of discrepancy arises from the fact that it portrays LAPS SJK as an organisation fully capable of resolving conflicts between PUJK and its clients outside of court. The disparity arises from the fact that LAPS SJK is a dispute resolution forum restricting the options available to both PUJK and customers. This closes the space for the parties to choose another institution, thereby reducing the principle of freedom of contract. As a party settling banking disputes with customers, it reduces the functions, duties and authorities of the independent LAPS SJK. Then, the position of PUJK as the founder and member of LAPS SJK has strong authority through a general meeting of members not owned by other organs, which is feared to include a standard clause of choice of banking dispute resolution forum in the standard agreement made. This study is significant because it demonstrates how the inconsistent policy restricts the freedom of contract when deciding where to resolve a dispute involving a bank. Future research examining the impact of the policy on banks and their clients may build upon the findings of this study. The findings may also serve as a roadmap for legislators looking to enhance the present approach and guarantee the preservation of the freedom of contract in settling bank disputes. All things considered, this study provides useful information regarding the present policy and how it impacts the banking sector in Indonesia.

ACKNOWLEDGMENTS

We would like to thank Universitas Ahmad Dahlan for supporting and funding this work under the supported professorship candidate research grant.

REFERENCES

Al-Fatih, S. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia* (1st ed.). UMM Press.

Al Amaren, E. M., & Al-Husban, M. M. (2024). A critical overview of Islamic Performance Bonds. *Legality : Jurnal Ilmiah Hukum*, *32*(1), 51–70. https://doi.org/10.22219/LJIH.V32I1.29964

Alauddin, R., Muhammad, T. B., Alting, H., & Hanafi, F. (2021). Customer Legal Protection: Resolution of Online Purchase Disputes Based on Non Governmental Organization in Ternate, Indonesia. *Review of International Geographical Education Online*. https://doi.org/10.33403/rigeo.800519

Alhasni Bakung, D., Abdussamad, Z., Muhtar, M. H., @2022 - Bakung, D. A., Abdussamad, Z., & Muhtar, M. H. (2022). The Principle of Freedom of Contract in Agricultural Product Sharing based on Islamic Law. *Jambura Law Review*, *4*(2), 344–358. https://doi.org/10.33756/JLR.V4I2.11645

Anggia, P., Yunita, A., & Fitriyanti, F. (2023). Legal Justice: The Abolition of the Principle of Bank Secrecy for Tax Interests in Indonesia. *Jambura Law Review*, *5*(2), 314–331. https://doi.org/10.33756/jlr.v5i2.18793

Ansari, T., & Negara, S. (2023). Normative Legal Research in Indonesia: Its Originis and Approaches. *Audito Comparative Law Journal (ACLJ)*, *4*(1), 1–9. https://doi.org/10.22219/ACLJ.V4I1.24855

Arfan, A., Arfan, I. A., Alkoli, A., & Ramadhita. (2024). The implementation of Maqashid Sharia: heterogeneity of scholars' fatwas towards Islamic banking contracts. *Legality : Jurnal Ilmiah Hukum*, *32*(1), 105–128. https://doi.org/10.22219/LJIH.V32I1.32170

Arifin, R. (2018). Law Enforcement in Banking Criminal Act Involving Insiders. *Jambe Law Journal*, *1*(1), 55–90. https://doi.org/10.22437/JLJ.1.1.55-90

Baddeley, M. (2020). The extraordinary autonomy of sports bodies under Swiss law: lessons to be drawn. *International Sports Law Journal*, *20*(1–2), 3–17. https://doi.org/10.1007/s40318-019-00163-6

Biard, A. (2019). Impact of Directive 2013 / 11 / EU on Consumer ADR Quality : Evidence from France and the UK. *Journal of Consumer Policy*, *42*, 109–147. https://doi.org/https://doi.org/10.1007/s10603-018-9394-z

Bobkov, V. (2018). Flexible Employment: the Way to Chaos or the New Model of the Labour Markets Stability. *Living Standards of the Population in the Regions of Russia*. https://doi.org/10.19181/1999-9836-2018-10022

Callison, W., Fenwick, M., Mccahery, J. A., & Vermeulen, E. P. M. (2018). Corporate Disruption : The Law and Design of Organizations in the Twenty - First Century. In *European Business Organization Law Review* (Vol. 19, Issue 4). Springer International Publishing. https://doi.org/10.1007/s40804-018-0120-8

Cohen, N. (1995). *Pre Contractual Duties: Two Freedoms and Contract to Negative*. Clarendon Press.

Dagan, H., & Heller, M. (2021). Autonomy for Contract, Refined. *Law and Philosophy Volume*, *40*, 213–245. https://doi.org/https://doi.org/10.1007/s10982-021-09404-y

Eleftheriadis, P. (2020). Corrective Justice Among States. *Jus Cogens*, 7–27. https://doi.org/doi.org/10.1007/s42439-019-00013-x

Enman-Beech, J. (2021). Drawing contract and polyamory together or: How I found the limits of liberal legality in kimchi cuddles comics. In *Canadian Journal of Law and Society*. https://doi.org/10.1017/cls.2020.26

Fagbemi, S. A. (2016). The doctrine of party autonomy in international commercial arbitration: myth or reality? *Journal of Sustainable Development Law and Policy (The)*. https://doi.org/10.4314/jsdlp.v6i1.10

Fia, M., & Sacconi, L. (2019). Justice and Corporate Governance: New Insights from Rawlsian Social Contract and Sen's Capabilities Approach. *Journal of Business Ethics*, *160*, 937–960. https://doi.org/https://doi.org/10.1007/s10551-018-3939-6

Flanigan, J. (2017). Rethinking freedom of contract. *Philosophical Studies*, *174*, 443–463. https://doi.org/https://doi.org/10.1007/s11098-016-0691-6

Fras, M. (2019). The Group Insurance Contract in Private International Law. *Netherlands International Law Review*, *66*, 507–535. https://doi.org/https://doi.org/10.1007/s40802-019-00146-2

Gabov, A. V., & Cherkesova, L. I. (2021). Implementation of the principle of freedom of contract in the conclusion of contracts for the purchase and sale of electric

power in retail electricity markets. *Gosudarstvo i Pravo*, 135–150. https://doi.org/10.31857/S102694520016186-5

Gelpern, A., Gulati, M., & Zettelmeyer, J. (2019). If boilerplate could talk: The work of standard terms in sovereign bond contracts. *Law and Social Inquiry*. https://doi.org/10.1017/lsi.2018.14

Gibbs, D., David, K., & Derek, G. (2022). Not by Contract Alone : The Contractarian Theory of the Corporation and the Paradox of Implied Terms. *European Business Organization Law Review*. https://doi.org/10.1007/s40804-022-00241-7

Gorobets, K. (2020). The International Rule of Law and the Idea of Normative Authority. *Hague Journal on the Rule of Law*, *12*, 227–249. https://doi.org/https://doi.org/10.1007/s40803-020-00141-3

Hidayat, A. S., Disemadi, H. S., Al-Fatih, S., Maggalatung, A. S., & Yunus, N. R. (2022). Legal Obligations of Corporate Social Responsibility as Efforts to Improve the Image of Islamic Banking in Indonesia. *Samarah*, *6*(2), 775–797. https://doi.org/10.22373/sjhk.v6i2.12455

Hollander, S. (2016). Ethical Utilitarianism and The Theory of Moral Sentiments: Adam Smith in Relation to Hume and Bentham. *Eastern Economic Journal Volume*, *42*, 557–580. https://doi.org/https://doi.org/10.1057/s41302-016-0003-z

Hrynyuk, R. F., & Hotsuliak, Y. V. (2021). The Doctrinal Impact Of Social Contract Category On The Development Of The Philosophy Of Legal Sciences. *Constitutional State*. https://doi.org/10.18524/2411-2054.2021.41.225571

Huda, M. K., Hernoko, A. Y., & Khairandy, R. (2017). The characteristics of non-litigation resolution for life insurance lawsuit in Indonesia. *Journal of Advanced Research in Law and Economics*. https://doi.org/10.14505/jarle.v8.8(30).12

Kokorin, I. (2021). The Rise of ' Group Solution ' in Insolvency Law and Bank Resolution. In *European Business Organization Law Review* (Vol. 22, Issue 4). Springer International Publishing. https://doi.org/10.1007/s40804-021-00220-4

Kur, A. (2021). Easy Is Not Always Good – The Fragmented System for Adjudication of Unitary Trade Marks and Designs. *IIC - International Review of Intellectual Property and Competition Law*, *52*, 579–595. https://doi.org/https://doi.org/10.1007/s40319-021-01052-y

LAPS SJK. (2023). *Laporan Tahunan 2023: Perseverance Leads The Way*.

Leary, L. O. (2021). Independence and impartiality of sports disputes resolution in the UK. *The International Sports Law Journal*, *21*(4), 243–256. https://doi.org/10.1007/s40318-021-00189-9

Lombard, M. (2021). The consumer protection act 68 of 2008 and parol evidence. *Potchefstroom Electronic Law Journal*. https://doi.org/10.17159/1727-3781/2021/V24I0A9486

Luchtman, M. (2011). Choice of forum in an area of freedom, security and justice. *Utrecht Law Review*, *7*(1), 74. https://doi.org/10.18352/ulr.148

Marwa, M. H. M., Al-Fatih, S., Hussain, M. A., & Haris, H. (2023). The Position and Role of the Sharia Supervisory Board in Ensuring Sharia Compliance Equity Crowdfunding in Indonesia. *Jurnal Hukum*, *39*(2), 24. https://doi.org/10.26532/jh.v39i2.33330

Matteo Cotugno, & Stefanelli, V. (2022). Management customer complaints and performance: banks, be careful! *Journal of Management and Governance*.

https://doi.org/https://doi.org/10.1007/s10997-021-09616-3

Minto, A., Prinz, S., & Wulff, M. (2021). A Risk Characterization of Regulatory Arbitrage in Financial Markets. In *European Business Organization Law Review* (Vol. 22, Issue 4). Springer International Publishing. https://doi.org/10.1007/s40804-021-00219-x

Ojiako, U., Chipulu, M., Marshall, A., & Williams, T. (2018). An examination of the 'rule of law' and 'justice' implications in Online Dispute Resolution in construction projects. *International Journal of Project Management*, *36*(2), 301–316. https://doi.org/https://doi.org/10.1016/j.ijproman.2017.10.002

Oliveira, L. V. P. De. (2017). Lex sportiva as the contractual governing law. *The International Sports Law Journal*, *17*(1), 101–116. https://doi.org/10.1007/s40318-017-0116-5

Ratna, D., Hapsari, I., Aji, A., Ilmiawan, S., & Samira, E. (2022). Non-litigation as An Environmental Dispute Resolution Mechanism in Indonesia. *Indonesia Law Reform Journal*, *2*(1), 55–66. https://doi.org/10.22219/ILREJ.V2I1.20756

Reichard, C. (2020). Keeping litigation at home: The role of states in preventing unjust choice of forum. *Yale Law Journal*.

Risch, M., & Risch, M. (2022). Procedural Posture and Sosial. *Minnesota Law Review*, *107*. https://doi.org/http://dx.doi.org/10.2139/ssrn.4054997

Sudarwanto, A. L. S., Jaelani, A. K., Karjoko, L., & Handayani, I. G. A. K. R. (2021). Position of Freedom of Contract Principle in Forestry Partnership Policy. *Journal of Legal, Ethical and Regulatory Issues*, *24*(5), 1–11.

Syamsudin, M. (2021). The Failure of the Court to Protect Consumers : A Review of Consumer Dispute Resolution in Indonesia. *Journal of Consumer Policy*, *158*, 117–130. https://doi.org/https://doi.org/10.1007/s10603-020-09470-0

Tasalov, F. A. (2019). "Non-freedom" of a contract and unfair contractual terms in the practice of state and municipal procurement. *Actual Problems of Russian Law*. https://doi.org/10.17803/1994-1471.2019.99.2.085-094

Turvey, R. (2018). Freedom of Contract. In *The Economics of Real Property*. https://doi.org/10.4324/9781315103099-8

Ulinihayati, N., & Husein, Y. (2022). Penyelesaian Sengketa Perasuransian melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK). *Masalah Masalah Hukum*, *51*(3), 350. https://doi.org/10.21143/jhp.vol29.no4.564