



## Arbitration Arrangements Reform Online as an Alternative Form of Dispute Resolution in Fintech

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### **Abstract**

Fintech business is a business conducted online will be effective and efficient if the dispute that arises resolved through alternative online dispute resolution, currently there is an institution that facilitates in using online arbitration for fintech dispute resolution, the institution is LAPS SJK, regarding the arrangement of speech is also regulated in the internal rules of LAPS SJK, However, the rule will be problematic in its use because fintech activities based on smart contract do not contain dispute resolution clauses through arbitration, in addition to the costs that are in liability through large arbitration cannot reach dispute resolution in fintech. This research aims to find out and analyze the urgency of online arbitration arrangements in fintech disputes and to analyze and reformulate arrangements regarding online arbitration in fintech disputes, this research is prepared using normative juridical research with statutory approach methods and analytical approaches. The results obtained in this study are an effective and efficient dispute resolution alternative used in fintech dispute resolution is online arbitration, but there must be an arrangement that requires fintech organizers to include online arbitration as an alternative to dispute resolution and in addition, the cost of litigating through online arbitration in LAPS SJK must be cheaper and reach small fintech dispute objects to be resolved disputes through online arbitration in fintech.

**Keywords:** *Reformulation; Alternative Dispute Resolution; Online Arbitration; Fintech*

### **Preliminary**

One of the activities of the state that can be a parameter of the level of prosperity of society and economic development in Indonesia is trade and business, so the role of trade and business is very important in improving the economy of a country.<sup>1</sup> The era of globalization, which is supported by rapid technological advances, has resulted in technology having an important role in the development of the world of trade and business. The development of technology in the business world is something that cannot be avoided along with the increasing aspects of the benefits received by the community. Starting from ordering an item or service to payment, everything is done simply by using the application on the

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<sup>1</sup> Meline Gerarita Sitompul, M Syaifuddin, and Annalisa Yahanan, "Online Dispute Resolution (Odr): Prospek Penyelesaian Sengketa E-Commerce Di Indonesia," *Jurnal Renaissance*, Vol. 1, No. 2, 2016, Hlm. 76.

website *smartphone* or *gadget (online)*. With this facility, it can save costs incurred for transportation and communication and is considered more efficient so that the choice of digital transactions is chosen by the community.<sup>2</sup>

One of the businesses using technology is *fintech*. *Fintech* is an innovation and a combination of financial services and information technology. This combination can make it easier for users who want to use financial services, that is, it is only enough to use *smartphone* or *gatget* people can apply for credit *online* and other financial services. other than that, *fintech* has a variety of functions that are believed to be able to develop quickly. In Indonesia today, *fintech* able to serve *e-money*, *virtual account*, *agregator*, *p2p lending*, *crowdfunding* and financial transactions *online* other.<sup>3</sup> As of November 30, 2020 in Indonesia, there have been 153 (one hundred and fifty three) companies *fintech*, consisting of 36 (thirty six) companies *fintech* licensed and 117 (one hundred and seventeen) companies *fintech* registered.<sup>4</sup> Because of the ease of use, it is what causes many people to use the services *fintech* terutama *fintech lending*. Until August 2020, there were 669,580 (Six Hundred Sixty Nine Thousand Five Hundred and Eighty) people as *lender* or lender and 27,379,996 (Twenty Seven Million Three Hundred Seventy Nine Thousand Nine Hundred Ninety Six) *borrower* or borrower.<sup>5</sup> The number of consumers who use the service *fintech* does not rule out the possibility of conflicts or disputes between *lender*.

*In terms of dispute resolution, OJK applies the basic principles of user protection as regulated in Article 29 letter e of POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services.*<sup>6</sup>

“The organizer is obliged to apply the basic principles of User protection, namely: e. User dispute resolution is simple, fast, and affordable.

“This statement is also in line with Article 31 paragraph 1 letter e of POJK Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector which also states that:<sup>7</sup>

“Operators are required to apply the basic principles of consumer protection, namely: e. handling complaints and resolving consumer disputes in a simple, fast, and affordable cost”.

This means that any dispute resolution related *fintech*, must be completed in a simple, fast and affordable or low cost way. Where this can be realized by non-litigation dispute resolution or alternative dispute resolution, because alternative dispute resolution is aimed at achieving greater efficiency

<sup>2</sup> Mariske Myeke Tampi, “Menakar Progresivitas Teknologi Finansial (Fintech) Dalam Hukum Bisnis Di Indonesia,” *Jurnal Ilmiah Ilmu Hukum*, Vol. 16, No. 2, 2019, Hlm. 247-248.

<sup>3</sup> Muhamad i Rizal, Erna Maulina, Nenden Kostini, “*Fintech As One Of The Financing Solutions For Smes*,” *Jurnal Pemikiran dan Penelitian Administrasi Bisnis dan Kewirausahaan*, Vol. 16, No. 103, 2018, Hlm. 90.

<sup>4</sup>Data dari Otoritas Jasa Keuangan <https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/fintech/Documents/Statistik%20FL%20November.pdf>. Diakses pada tanggal 4 Januari 2021.

<sup>5</sup> *Ibid.*

<sup>6</sup> Pasal 29 Peraturan OJK Nomor 77/POJK.01/2016 tentang Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 324, menyebutkan bahwa :

“Penyelenggara wajib menerapkan prinsip dasar dari perlindungan Pengguna yaitu: a. transparansi; b. perlakuan yang adil; c. keandalan; d. kerahasiaan dan keamanan data; dan e. penyelesaian sengketa Pengguna secara sederhana, cepat, dan biaya terjangkau.”

<sup>7</sup> Pasal 31 ayat 1 Peraturan Otoritas Jasa Keuangan Nomor 13/POJK.02/2018 tentang Inovasi Keuangan Digital Di Sektor Jasa Keuangan, Tambahan Lembaran Negara Republik Indonesia Nomor 6238, menyebutkan bahwa :

“Penyelenggara wajib menerapkan prinsip dasar perlindungan konsumen yaitu: a. transparansi; b. perlakuan yang adil; c. keandalan; d. kerahasiaan dan keamanan data/informasi konsumen; dan e. penanganan pengaduan serta penyelesaian sengketa konsumen secara sederhana, cepat, dan biaya terjangkau.”

compared to litigation dispute resolution,<sup>8</sup> and also includes reducing costs and delays in handling disputes and in anticipating the overload of cases in court.

The legal umbrella regarding alternative dispute resolution is generally regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and regarding alternative dispute resolution in the financial services sector specifically regulated in POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. In the POJK, there are 2 (two) types of alternative dispute resolution, namely: mediation and arbitration.<sup>9</sup>

Prior to the enactment of POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector and the birth of the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK), alternative dispute resolution institutions in the financial services sector had obstacles in their implementation, one of which was the Financial Services Sector. Alternative for Indonesian Banking Dispute Resolution (LAPSPI), the alternative dispute resolution institution has a problem, namely since operating on January 1, 2016, LAPSPI has received dispute complaints from various regions, including Ketapang, Melawi, Tebing Tinggi, Ambon, Balikpapan, Payakumbuh, Semarang, Kediri, etc. Conditions of such complaints/disputes require that Mediation be settled at the place of the disputing parties, but on the other hand the disputes submitted are generally disputes with relatively small demands (under Rp. 100 million) so that they become inefficient because they require support for relatively large operational funds. such as transportation and accommodation costs for the Mediator.<sup>10</sup> This does not rule out the possibility that this will also occur in dispute resolution in the financial sector *fintech*, because the number of loans or disputed objects is relatively small compared to the banking sector

The arbitration dispute resolution model is widely chosen by the disputing parties in business activities. This is because it has various advantages over other alternative dispute resolutions, but it also has not been able to answer the problems regarding dispute resolution in Indonesia *fintech*. Arbitration conducted by *offline* ineffective because the cost of the case is greater than the object of the dispute. In January 2020 to November 2020 AFPI (Indonesian Joint Funding Fintech Association) recorded 3,726 complaints related to *fintech peer to peer (P2P) lending*,<sup>11</sup> This is a result of the delay in resolving disputes *fintech* because there are no alternative dispute resolution institutions or dispute resolution methods *fintech* that can reach the public or users of fintech services whose objects of dispute are relatively small.

Activity *fintech* which are generally based on electronic agreements and whose activities can be carried out across national borders will be more effective and efficient if dispute resolution is carried out using arbitration *online*. Due to arbitration *online* This can be done using only the internet without having to meet directly with the disputing parties, so that the settlement process can be carried out by parties who are in cross-border areas. (*borderless*).<sup>12</sup> Arbitration *online* implicitly already known as part of alternative dispute resolution *online (online dispute resolution)* in Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, more precisely in article 72 paragraph 2 which states that:

“PMSE dispute resolution as referred to in paragraph (1) can be resolved electronically (*online dispute resolution*) in accordance with the provisions of the legislation”

<sup>8</sup> Syafrida, “Alternatif Penyelesaian Sengketa Sebagai Solusi Mewujudkan Asas Pemeriksaan Perkara Sederhana, Waktu Singkat Dan Biaya Murah,” *Jurnal Sosial Dan Budaya Syar-I, Volume 7, Nomor 4*, 2020, Hlm. 355.

<sup>9</sup> Pasal 8 ayat (3) POJK Nomor 61/POJK.07/2020 tentang Lembaga Alternatif Penyelesaian Sengketa di Sektor Jasa Keuangan.

<sup>10</sup> “Laporan Tahunan Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (Tahun 2018), Hlm 51.

<sup>11</sup> AFPI, “Pengaduan Fintech Pendanaan Turun,” Turun <https://republika.co.id/berita/qk89nw383/afpi-pengaduan-emfintechem-pendanaan-turun>, Diakses pada tanggal 2 Maret 2021.

<sup>12</sup> *Ibid*, Hlm. 91.

In addition, special arrangements in the financial services sector are also legal umbrellas regarding arbitration *online* implicitly regulated in Article 33 paragraph (1) POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector which states:

“Dispute resolution through the Financial Services Sector LAPS can be done through:

- a. Face to face face to face mediator or arbiter;
- b. electronic media; and/or
- c. Document check”

However, there is a problem if the activities *fintech* based on or using *smart contract*. Content of *smart contract* is all information about the terms of the contract and executes all imagined actions automatically.<sup>13</sup> Which means that all provisions or things in the contract are regulated or computerized automatically by a computer system so that the clauses in the contract cannot be changed. This makes the author argue that the parties to the dispute and want to resolve the dispute resolution using arbitration *online* will experience problems or difficulties if in *smart contract* there is no clause for resolving disputes through arbitration *online*, because this is a condition that must be met so that the parties can use arbitration *online* as an alternative dispute resolution. In addition, the unaffordable cost of using arbitration in dispute resolution facilitated by the SJK LAPS will hinder the use of arbitration in dispute resolution in the financial sector *fintech*. as an alternative dispute resolution. In addition, the unaffordable cost of using arbitration in dispute resolution facilitated by the SJK LAPS will hinder the use of arbitration in dispute resolution in the financial sector. *online* in dispute *fintech* and how to reformulate the arrangements regarding arbitration *online* and how to reformulate the arrangements regarding arbitration *fintech* with legal certainty?

## **Research Methods**

The type of research used in this research is normative juridical research. Normative juridical research is a legal research that puts the law as a construction of a norm system. The approach method used in writing this research is a statutory approach, because what will be studied are various legal rules that are the focus as well as the central theme of a study.<sup>14</sup> In addition, this writing uses an analytical approach, which is an approach to legal material that is carried out by understanding or knowing the meanings or terms contained in the laws and regulations conceptually, as well as knowing their application in legal decisions and practice.<sup>15</sup> The analysis technique in this study used prescriptive descriptive analysis. The legal material that has been obtained first is reduced to sort out its validity as legal material and its suitability with this writing material.

## **Results and Discussion**

### **The Urgency of Arbitration Arrangements *Online* on Dispute Resolution *Fintech***

The term arbitration comes from the Latin “*Arbitrase*” which means the power to get things done according to wisdom. If *arbitrase* dAssociated with wisdom, it can create an impression as if an arbitrator or an arbitral tribunal in resolving a dispute does not heed legal norms anymore and makes the decision to

<sup>13</sup> Dzulfikar Muhammad, “Karakteristik Perjanjian Jual Beli Dengan Smart Contract Dalam E-Commerce,” *Juriist-Diction*, Vol. 2, No. 5, 2019, Hlm. 1656.

<sup>14</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006), Hlm. 302.

<sup>15</sup> *Ibid*, Hlm. 310.

decide the dispute only at discretion. The concept is wrong, because in fact, the arbitrator or arbitral tribunal also applies the law as a judge or court does.<sup>16</sup> Arbitration is also known by other designations or terms that exist in each country and have the same purpose, for example arbitration or arbitration. *Arbitrage* (Dutch), *Arbitration* (English), *Arbitrage* or *Schiedsprush* (German), *Arbitrage* (France), which basically has the same meaning, namely the power to get things done according to wisdom.<sup>17</sup>

Arbitration can also be defined as a way of settling a civil dispute outside the general court or non-litigation dispute resolution based on an arbitration agreement made in writing by the disputing parties. The juridical definition of arbitration has been formulated in Article 1 point 1 of Law Number 30 of 1999 as previously explained, namely:<sup>18</sup>

“Arbitration is a way of settling a civil dispute outside the general court based on an arbitration agreement made in writing by the disputing parties.”

Arbitration is widely chosen in dispute resolution because its use is not limited by national boundaries (*borderless*) In addition, the nature of the arbitral award is final and has permanent legal force, binding on the parties (*final and binding*),<sup>19</sup> so there is no other legal remedy. Because of these factors, the dispute resolution process is faster and more efficient than other dispute resolution alternatives. Parties who wish to use arbitration as an alternative dispute resolution benefit because it is handled by arbitrators who generally have extensive knowledge.<sup>20</sup> These advantages make business people prefer arbitration compared to other dispute resolution alternatives in resolving their disputes.

However, in its implementation, arbitration also has drawbacks, namely that it can only reach the settlement of corporate disputes because the funds spent are relatively expensive, because of these factors the user *fintech* will not use arbitration as an alternative dispute resolution because the cost of the case to be incurred is far greater than the object in dispute. For example, the Alternative Dispute Resolution Institution that is currently running in the banking sector is LAPSPI. received dispute complaints from various regions, including Ketapang, Melawi, Tebing Tinggi, Ambon, Balikpapan, Payakumbuh, Semarang, Kediri, etc. Conditions of such complaints/disputes require that Mediation be settled at the place of the disputing parties, but on the other hand the disputes submitted are generally disputes with relatively small demands (under Rp. 100 million) so that they become inefficient because they require support for relatively large operational funds. such as transportation and accommodation costs for the Mediator, this also does not rule out the possibility that this will occur if the disputing parties in fintech use ordinary arbitration (*offline*). For this reason, it is necessary to have a more efficient form of arbitration in order to minimize the court costs incurred so that it can reach fintechs with small disputed objects. To achieve this, it is necessary to have an authorized institution.

As of 2019, the Financial Services Authority has established alternative institutions for resolving disputes in the financial services sector, namely: the Indonesian Insurance Mediation and Arbitration Agency (BMAI), the Indonesian Capital Market Arbitration Board (BAPMI), the Pension Fund Mediation Agency (BMDP), the Alternative Dispute Resolution Institution Indonesian Banking (LAPSPI), Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI), and Indonesian Pawnshops and Financing Mediation Agency (BMPPI).<sup>21</sup> Currently, all Alternative Dispute Resolution Institutions in the Financial Services Sector are combined as one as stated in POJK Number

<sup>16</sup> Prof. R. Subekti, *Arbitrase Perdagangan* (Bandung: Angkasa Offset, 1981), Hlm. 1.

<sup>17</sup> Muskitab, “Arbitrase Sebagai Alternatif Penyelesaian Sengketa,” *Jurnal Komunikasi Hukum* 4, no. 2 (2018), Hlm. 154.

<sup>18</sup> Pasal 1 angka 1 Undang-undang Nomor 30 tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, Lembaran Negara Republik Indonesia Tahun 1999 Nomor 138.

<sup>19</sup> Pasal 60 Undang-undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa:

“*Putusan arbitrase yang bersifat final, mempunyai kekuatan hukum tetap dan mengikat para pihak.*”

<sup>20</sup> Susanti Adi Nugroho, *Penyelesaian Sengketa Arbitrase Dan Penerapan Hukumnya* (Jakarta: Kencana, 2015), Hlm. 95-96.

<sup>21</sup> Otoritas Jasa Keuangan, Lembaga Alternatif Penyelesaian Sengketa, <https://www.ojk.go.id/id/kanal/edukasi-dan-perlindungan-konsumen/Pages/Lembaga-Alternatif-Penyelesaian-Sengketa.aspx> Diakses pada tanggal 6 Januari 2021.

61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The Alternative Dispute Resolution Institution in the Financial Services Sector is called the Financial Services Sector Alternative Dispute Resolution Institution (LAPS SJK) which obtained an operational permit from the OJK on December 29, 2020 and has started operating since January 1, 2021. The purpose of the establishment of LAPS SJK is to resolve disputes in the financial services sector is carried out in a fair, honest, open, effective and efficient manner. This is also stated in Article 29 letter e of POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services.<sup>22</sup>

“The Operator is required to apply the basic principles of User protection, namely: User dispute resolution in a simple, fast, and affordable cost”.

This statement is also in line with Article 31 paragraph 1 letter e of POJK Number 13/POJK.02/2018 concerning Digital Financial Innovation in the Financial Services Sector which also states that:<sup>23</sup>

“Operators are required to apply the basic principles of consumer protection, namely: e. handling complaints and resolving consumer disputes in a simple, fast, and affordable cost”.

Activity *fintech* which basically uses the internet and is recorded digitally, it allows for dispute resolution using online arbitration and is considered more effective and efficient than dispute resolution using arbitration *offline*.<sup>24</sup> In addition, activities *fintech* which is done without having to meet directly in line with dispute resolution using arbitration *online* so that the settlement process can also be carried out by parties residing in cross-border areas (*borderless*) without having to meet in person. Based on the description above, the reasons for this, it is very effective and efficient if the dispute resolution is carried out using arbitration *online*.

If referring to Article 4 paragraph (3) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which explains that:

“In the event that it is agreed that dispute resolution through arbitration occurs in the form of an exchange of letters, the sending of telex, telegram, facsimile, e-mail or in other forms of communication means, must be accompanied by a note of receipt by the parties.”

In addition, the legality of the use of online arbitration is implicitly also regulated in Government Regulation Number 80 of 2019 concerning Trading Through Electronic Systems, which is more precisely in article 72 paragraph 2 which states that:

“PMSE dispute resolution as referred to in paragraph (1) can be resolved electronically (*online dispute resolution*) in accordance with the provisions of the legislation”

Although it does not explicitly mention arbitration *online*, but in principle arbitration *online* is part or kind of *online dispute resolution*, so that these rules can also be used as the basis or legality in using dispute resolution in the fintech sector.

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<sup>22</sup> Pasal 29 POJK Nomor 77/POJK.01/2016 tentang "Layanan Pinjam Meminjam Uang Berbasis Teknologi Informasi" Sarwin, Lembaran Negara Republik Indonesia Tahun 2016 Nomor 324, menyebutkan bahwa :

“Penyelenggara wajib menerapkan prinsip dasar dari perlindungan Pengguna yaitu: a. transparansi; b. perlakuan yang adil; c. keandalan; d. kerahasiaan dan keamanan data; dan e. penyelesaian sengketa Pengguna secara sederhana, cepat, dan biaya terjangkau”.

<sup>23</sup> Pasal 31 ayat 1 POJK Nomor 13/POJK.02/2018 tentang Inovasi Keuangan Digital Di Sektor Jasa Keuangan, Tambahan Lembaran Negara Republik Indonesia Nomor 6238, menyebutkan bahwa :

“Penyelenggara wajib menerapkan prinsip dasar perlindungan konsumen yaitu: a. transparansi; b. perlakuan yang adil; c. keandalan; d. kerahasiaan dan keamanan data/informasi konsumen; dan e. penanganan pengaduan serta penyelesaian sengketa konsumen secara sederhana, cepat, dan biaya terjangkau”.

<sup>24</sup> “Sarwin Kiko Napitupulu dkk, *Kajian Perlindungan Konsumen Di Sektor Jasa Keuangan* (Jakarta: Departemen Perlindungan Konsumen, Otoritas Jasa Keuangan, 2017), Hlm. 73”.

In addition, regulations or arrangements regarding *online dispute resolution* It is also regulated in Article 33 paragraph (1) of POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector which states:

“Dispute resolution through the Financial Services Sector LAPS can be done through:

- a. Face to face directly in front of the mediator or arbitrator;
- b. Face to face directly in front of the mediator or arbitrator
- c. Document check”

Regarding technical rules in arbitration proceedings *online*, It has also been regulated in the internal rules of the SJK LAPS, which essentially allows dispute resolution using arbitration with *online*, but there is a problem if *fintech* use *smart contract* in its implementation it does not include a dispute resolution clause using arbitration, because *Smart contract* is an electronic contract relating to *blockchain*, data *smart contract* later converted into a secret code in a shared ledger, so that all information can be recorded and stored in blocks that cannot be lost or changed by anyone. Until now, there are still many *startup fintech* which does not include a dispute resolution clause in its contract, non-compliance in including a dispute resolution clause through alternative dispute resolution is motivated by the absence of rules requiring *startup fintech* include a clause on dispute resolution through alternative dispute resolution facilitated by LAPS SJK

In addition, there are costs that must be incurred if you want to use dispute resolution using arbitration *online* at LAPS SJK, the amount of the fee is as follows:

- a. Administration fee : Rp. 2.500.000,- (two million five hundred thousand rupiah);
- b. Arbitration Administration Fee calculated based on the object of the dispute with a minimum of Rp. 10,000,000,- (ten million rupiah);
- c. The arbitrator's honorarium is calculated based on the value of the dispute with a minimum fee of Rp. 25,000,000,- (twenty five million rupiah), and;
- d. The inspection fee deposit is Rp. 5.000.000,- (five million rupiah);

As described above regarding the costs that must be incurred, in the author's view, the costs incurred if using the arbitration mechanism in dispute resolution *fintech* which is relatively large, resulting in non-performance of dispute resolution that meets the low cost requirements as regulated in Article 29 letter e of POJK Number 77/POJK.01/2016 concerning Information Technology-Based Borrowing-Lending Services and Article 31 paragraph 1 letter e of POJK Number 13/POJK. 02/2018 regarding Digital Financial Innovation in the Financial Services Sector. In addition, the relatively small object of fintech dispute results in the inaccessibility of costs that must be incurred if using an arbitration mechanism *fintech* which is relatively small results in the inaccessibility of the costs that must be incurred if using the arbitration mechanism *online*.

Teori *economic analysis of law* see from efficiency in determining a choice in human life. Efficiency is always relevant in creating legal and policy products. The approach from the efficiency (economic) aspect in looking at the law is in an effort to minimize *cost* (cost) the operation of the law (rules) that have been compiled by legal experts so as not to incur high, inefficient and irrational economic costs so that they can provide benefits to the community. If it is related to the internal rules of the SJK LAPS regarding costs in settlement through arbitration, it cannot reach in a relatively small dispute because the costs to be incurred in dispute resolution are greater than the object disputed in the dispute resolution process. *fintech* so that these rules do not provide benefits for consumers or service users *fintech* as well as organizers *fintech*. Based on the explanation above, it can be drawn a common thread that the arrangement regarding arbitration *online* must also pay attention to the things that are needed, so that these rules can be the basis or solutions to overcome problems in *fintech*. With the

arrangement or legal basis that regulates completely and precisely in the dispute *fintech* is expected to minimize and resolve disputes that arise. Thus, the presence of fintech in Indonesia really has a positive effect on the convenience of financial services and does not cause harm to the community.

### **Re-formulation of Arbitration Arrangements *Online* on Dispute Resolution *Fintech* in accordance with the Legislation**

As explained in the previous discussion, arbitration implicitly *online*, as explained in the previous discussion, arbitration implicitly:

“In the event that it is agreed that the settlement of the dispute through arbitration occurs in the form of exchange of letters, sending of telex, telegram, facsimile, e-mail or other forms of means of communication, it must be accompanied by a note of the recipient by the parties.”

Based on the statement, it is possible to conduct arbitration *online* provided the parties to the dispute agree to do so. However, the author observes that Article 4 paragraph (3) of Law Number 30 of 1999 does not re-regulate the mechanism, scope and other special requirements regarding dispute resolution *online*.

Besides that, in *fintech* whose activities are also initiated by an electronic contract, there are problems if the contract is in the form of: *smart contract* which there is no arbitration clause in it because of all the provisions or matters contained in the *smart contract* cannot be changed. Therefore, parties who wish to resolve disputes or disputes using arbitration must make an additional written agreement. These requirements have been stated in Article 9 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution which explains that:

“In the event that the parties choose to resolve the dispute through arbitration after the dispute has occurred, the agreement regarding this matter must be made in a written agreement signed by the parties.”

Regulations or arrangements regarding Arbitration *online* it is regulated in Article 72 paragraph (2) of PP Number 80 of 2019 concerning Trading Through Electronic Systems which explains that :

“PMSE dispute resolution as referred to in paragraph (1) can be carried out electronically (*online dispute resolution*) in accordance with the provisions of the legislation.”

The PP explains that the settlement of electronic trade disputes can be resolved through: *online dispute resolution*, one of *online dispute resolution* constitutes arbitration *online*. constitutes arbitration *online* constitutes arbitration *fintech* constitutes arbitration.

However, in its development, *fintech* has various types of which there are even types of fintech that cannot be classified as Trading Through Electronic Systems (PMSE) because they are engaged in social activities, for example: Kitabisa.com is a type of *fintech crowdfunding*. Kitabisa.com has various types of products, such as zakat, donations for people in need (ex: affected by Covid 19) where there is no commercial benefit for these social activities. So according to the author, the legal basis for *online* arbitration cannot be fully guided by the PP

In particular, the Financial Services Authority has regulated *online* arbitration. However, the regulation only explains that dispute resolution using alternative dispute resolution in the Financial Services sector can be done through electronic media. As regulated in Article 33 paragraph (1) of POJK Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector which states:



“Dispute resolution through the Financial Services Sector LAPS can be done through:

- a. Face to face directly in front of the mediator or arbitrator;
- b. Face to face directly in front of the mediator or arbitrator
- c. Document check”

According to the author, the types of laws and regulations as referred to above are very relevant if they are regulated using a Ministerial regulation or other similar regulations of the same position. This is based on the fact that there has been a dispute resolution in the financial sector through arbitration, namely LAPSPI, however, it should be noted that the institution has not yet used arbitration. *online*, because there is still no statutory regulation that regulates it. Therefore, conclusions can be drawn later when there is *legal standing* regarding arbitration *online* the government can make a policy of dispute resolution in *fintech* the government can make a policy of dispute resolution in *fintech*, to add a dispute resolution clause through arbitration *online* in an electronic contract if the parties later want a dispute resolution using arbitration *online*.

*Online* arbitration is an alternative dispute resolution that is suitable for use in resolving disputes in fintech, because *fintech* activities are based on electronic agreements, use internet facilities and are recorded digitally, making it possible to resolve disputes using online arbitration. The institution authorized to resolve fintech disputes using *online* arbitration is the SJK LAPS and regulations regarding the technical implementation of online arbitration have been regulated in the internal rules of the SJK LAPS. However, according to the author, this rule is considered to still have not answered the current problems because the inappropriate arrangement of alternative dispute resolution (*online* arbitration) in fintech makes it difficult to resolve disputes through online arbitration. The problem is motivated by the use of smart contracts that cannot be changed and the costs are quite large, therefore it is necessary to add a clause regarding the obligation to include alternative dispute resolution mechanisms that are integrated into the master contract and besides that, the costs incurred must be affordable or adjust to the object of the dispute. in *fintech*.

## **Conclusion**

*Online* arbitration is an alternative dispute resolution that is suitable for use in resolving disputes in fintech, because *fintech* activities are based on electronic agreements, use internet facilities and are recorded digitally, making it possible to resolve disputes using *online* arbitration. The institution authorized to resolve fintech disputes using *online* arbitration is the SJK LAPS and regulations regarding the technical implementation of *online* arbitration have been regulated in the internal rules of the SJK LAPS. However, according to the author, this rule is considered to still have not answered the current problems because the inappropriate arrangement of alternative dispute resolution (*online* arbitration) in *fintech* makes it difficult to resolve disputes through online arbitration. The problem is motivated by the use of smart contracts that cannot be changed and the costs are quite large, therefore it is necessary to add a clause regarding the obligation to include alternative dispute resolution mechanisms that are integrated into the master contract and besides that, the costs incurred must be affordable or adjust to the object of the dispute. in *fintech*.

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