

TINJAUAN YURIDIS PENERAPAN PRINSIP *DUE PROCESS OF LAW* PADA PENYELESAIAN SENGKETA PERBANKAN MELALUI LEMBAGA ALTERNATIF PENYELESAIAN SENGKETA PERBANKAN INDONESIA

INTISARI

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Tujuan dari penelitian ini, adalah *pertama* untuk mengetahui dan mengkaji penerapan prinsip *due process of law* pada penyelesaian sengketa perbankan oleh Lembaga Alternatif Penyelesaian Sengketa Perbankan Indonesia (LAPSPI), dan *kedua* untuk mengetahui dan mengkaji kendala yang dihadapi oleh LAPSPI dalam menerapkan prinsip *due process of law* dalam penyelesaian sengketa perbankan.

Jenis penelitian ini adalah penelitian yuridis normatif dan empiris, pendekatan yuridis normatif digunakan untuk menganalisis norma-norma hukum yang meliputi kaedah hukum, sistem hukum dan peraturan hukum konkrit khususnya terkait dengan permasalahan hukum yang diteliti, dan pendekatan empiris mempunyai tujuan untuk menganalisa dan mengevaluasi penerapan hukum terkait dengan permasalahan hukum yang diteliti. Pengumpulan data dilakukan melalui penelitian kepustakaan dan penelitian lapangan. Selanjutnya, data yang telah diperoleh dari penelitian kepustakaan dan penelitian lapangan dianalisis secara deskriptif kualitatif sehingga diperoleh deskripsi hingga akhirnya mendapatkan kesimpulan dan saran.

Hasil penelitian menunjukkan, *pertama* bahwa LAPSPI telah menerapkan prinsip “*due process of law*” karena di dalam peraturan dan prosedur yang ditetapkan oleh LAPSPI untuk layanannya (mediasi, adjudikasi dan arbitrase) telah mencerminkan aturan minimal dari prinsip “*due process of law*” yaitu *hearing, defence, evidence, a fair and impartial court* namun untuk *counsel* atau pendampingan/diwakili oleh kuasa hukum belum sepenuhnya diterapkan di seluruh layanan LAPSPI. *Kedua*, kendala yang dihadapi LAPSPI dalam penerapan prinsip *due process of law* adalah sikap para pihak yang tidak kooperatif pada saat perundingan mediasi, Para Pihak (apabila para pihak berupa perusahaan) diwakili oleh pegawai yang tidak mempunyai kewenangan untuk mengambil keputusan, dan LAPSPI yang tidak mempunyai kewenangan untuk memaksa pelaksanaan keputusan yang dihasilkan dari layanan LAPSPI (hasil mediasi, adjudikasi dan arbitrase).

Keyword : *due process of law*, penyelesaian sengketa perbankan, LAPSPI.

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YURIDICAL REVIEW OF APPLICATION DUE PROCESS OF LAW PRINCIPLE IN BANKING SETTLEMENT THROUGH INDONESIAN BANKING DISPUTE SETTLEMENT ALTERNATIVE INSTITUTE

ABSTRACT

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The purpose of this research is, *firstly* to identify and review the application of due process of law principles to the resolution of banking disputes by the Indonesian Banking Dispute Settlement Alternative Institute (LAPSPI), and *secondly* to find out and examine the obstacles faced by LAPSPI in applying the due process of law in the settlement of banking disputes.

The type of this research is normative juridical and empirical research, normative juridical approach is used to analyze legal norms covering legal method, legal system and concrete law regulation especially related to legal problem studied, and empirical approach have purpose to analyze and evaluate application of law related to the legal issues studied. Data collection is done through literature research and field research. Furthermore, the data that have been obtained from literature research and field research are analyzed descriptively qualitative in order to get the description until finally get the conclusion and suggestion.

The results show, *firstly*, that LAPSPI has applied the "due process of law" principle because in the rules and procedures established by LAPSPI for its services (mediation, adjudication and arbitration) has reflected the minimum rules of "due process of law" principles of hearing, defenses, evidence, a fair and impartial court but for counsel or counseling / representation by lawyers has not been fully implemented in all LAPSPI services. *Secondly*, difficulties for LAPSPI to apply the due process of law principle are the attitude of the uncooperative parties during the mediation negotiations, the Parties (if the parties are in the form of a company) are represented by employees who have no decision-making authority and LAPSPI which has no authority to compel the execution of decisions resulting from LAPSPI services (outcome of mediation, adjudication and arbitration).

Key Word : due process of law, settlement of banking disputes, LAPSPI

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