

# Legal Review of POJK No. 61/POJK.07/2020 Related to Integration of Alternative Dispute Resolution Institutions for Financial Service Sector

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**Abstract.** Nowadays, the method of dispute resolution through the judiciary has received sharp criticism, both from legal theorists. The role and function of the judiciary, experiencing too heavy a burden (overloaded), slow and waste of time, expensive costs and less responsive to public interest or appearance that is too formalistic and too technical. Even so, most cases that occur in society still flow to the courts to pay and are decided in the context of fair settlement. A positive trend can be seen from the increasing recognition of Alternative Dispute Resolution, the Financial Services Authority (OJK) also provides arrangements related to Alternative Dispute Resolution in the Financial Services Sector. POJK p No. 1/POJK.07/2014 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector stated that the establishment of an Alternative Dispute Resolution Institution in the Financial Services Sector, Existing Complaint mechanisms often fail to reach agreement. 6 (six) LAPS are here to provide fast, cheap, fair, and efficient dispute resolution. In its development, the presence of 6 (six) LAPS was ineffective and inefficient, and resulted in a significant burden of operational institutions. Departing from the input of various parties, the OJK set POJK No. No.61 / POJK.07/2020 Regarding Alternative Dispute Resolutions Institutions for Financial Services Sector (LAPS-SJK). To improve the efficiency of LAPS-SJK for the Financial Services Sector, it is necessary to establish an Integrated Institution which is related to all disputes in the financial service sector.

**Keywords:** Finance; Dispute; Alternative; Finance Service

## 1 Introduction

Theoretically, there are two forums that the parties can choose in resolving disputes, through court (litigation) or out of court (non-litigation).[1] The legal basis for the parties to choose a forum to resolve business disputes is also clearly regulated in Law No. 48 of 1999 concerning Judicial Power. Article 58 states: "*Efforts to settle civil disputes can be carried out outside the state court through arbitration or alternative dispute resolution*". Alternative dispute resolution processes pursued by parties outside the court, are a reality in society that must be accepted. The causative factor is because the judiciary in court (litigation) is loaded with the burden of formalities, procedures, bureaucracy, and strict methodologies.[2] Nowadays, the method of dispute resolution through the judiciary has received sharp criticism, both from practitioners and legal theorists. The roles and functions of the judiciary are overloaded, slow and a waste of time, expensive and unresponsive to the public interest, or considered too formalistic and too technical. Nevertheless, most cases that occur in the community continue to flow to the courts to be examined and decided in order to obtain a fair settlement.[3]

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is present as a form of the presence of the State in providing choices to people who experience legal problems, that if there is a legal problem the Judiciary is not the only destination. The Financial Services Sector is a sector that has the risk of a dispute between the parties.[4] Financial Services Institutions include institutions that carry out activities in the Banking, Capital Market, Insurance, Pension Fund, Financing Institutions, and Other Financial Services Institutions sectors.[5] Other Financial Services Institutions are pawnshops, guarantee

institutions, Indonesian export financing institutions, secondary housing finance companies, and institutions that organize mandatory public fund management, including providers of social security, pension and welfare programs, as referred to in the laws and regulations concerning pawnshops, guarantees, Indonesian export financing institutions, secondary housing finance companies, and mandatory public fund management, as well as other financial service institutions that are declared to be supervised by the Financial Services Authority (OJK) based on statutory regulations.[5] The sector has the authority to collect funds from the public which of course can have the risk of misunderstandings that lead to disputes.

OJK as an institution that is obliged to protect the parties, both consumers and financial institutions, stipulates OJK Regulation (POJK) No. 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, based on the POJK, OJK has established 6 Alternative Dispute Resolution Institutions (LAPS) in the Financial Services Sector, as follows: 1) Indonesian Arbitration and Mediation Guarantee Agency (BAMPI), 2) Indonesian Capital Market Arbitration Board (BAPMI), 3) Pension Fund Mediation Board (BMDP), 4) Indonesian Banking Dispute Settlement Alternative Institution (LAPSPI), 5) Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI), 6) Indonesian Guarantee Agency Indonesian Pawnshop and Financing Mediation (BMPPI).[6]

Complaint settlement mechanism in the financial services sector is pursued through 2 (two) stages, the settlement of Complaints made by Financial Services Institutions (internal dispute resolution) and dispute resolution through judicial institutions or institutions outside the judiciary (external dispute resolution).[7] This is one of the functions of OJK to provide protection to consumers in the financial services sector which aims to create a reliable consumer protection system, increase consumer empowerment, and raise awareness of Financial Services Institutions so as to increase public confidence in the financial services sector.[7] POJK No. 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector states that in the establishment of Alternative Dispute Resolution Institutions in the Financial Services Sector, the existing Complaints mechanism often does not reach an agreement. 6 (six) LAPS are here to provide fast, cheap, fair, and efficient dispute resolution.

In its development, the presence of 6 (six) LAPS is considered less effective and efficient, as well as causing a significant operational burden on the Institution.[8] Departing from the input of various parties OJK stipulates POJK No. No. 61/POJK.07/2020 Regarding Alternative Institutions for Dispute Resolution in the Financial Services Sector. In order to improve the effectiveness and efficiency of the Financial Services Sector LAPS, it is necessary to establish a Financial Services Sector LAPS that handles all financial services sector Disputes, both conventional and sharia.[9] The establishment of the Institution is expected to result in the same service quality standards for all Consumers and facilitate Consumers in resolving Disputes, including Disputes arising from the use of financial products and services involving more than 1 (one) financial services sector. In addition, the establishment of the Financial Services Sector LAPS is expected to minimize the operational cost burden of the Financial Services Sector LAPS by utilizing technological developments, while maintaining service quality.[9]

Based on this background, several elements that can be identified as problems are as follows: 1) How is the legal review of the Regulation related to Alternative Financial Services Dispute Resolution? 2) What are the legal considerations behind the Financial Services Authority in integrating Alternative Dispute Resolution Institutions for the Financial Services Sector? The Financial Services Authority established 6 (six) Alternative Financial Services Dispute Resolution Institutions from 2014 based on POJK No. 1/POJK.07/2014 stand alone. This, seems ineffective, many people still do not know the existence of these institutions, even though there are many benefits that will be obtained by the parties if the dispute resolution is through LAPS. The presence of the Financial Services Sector LAPS through the stipulation of POJK No. No.61/POJK.07/2020 stipulates that the Financial Services Sector LAPS can resolve public disputes in various fields, which of course are still in the financial services sector. It is interesting to examine whether POJK No. No.61/POJK.07/2020 is more efficient and integrated or is it actually the formation of a new institution?

## **2 Result and Discussion**

### **2.1 What is Dispute?**

The legal relationship between legal subjects can cause 2 kinds of reactions, positive reactions, and negative reactions. A positive reaction where one party does not feel a loss, while a negative reaction is a reaction that occurs where one party feels aggrieved so that it can cause a dispute.[10] The meaning of the word dispute according to the Big Indonesian Dictionary means something that causes a difference of opinion; quarrel; disputation.[11] Laura Nader and Harry F. odd' make an explicit distinction between:[12] 1. *Pre-conflict* is the underlying state of a person's dissatisfaction; 2. *Conflict*: is a situation where the parties are aware of or know about the feeling of dissatisfaction; 3. *Dispute*: is a situation where the conflict is declared publicly or by involving a third party. According to Vilhelm Aubert, dispute or conflict is defined as a condition caused by two or more people which is characterized by several signs of overt conflict.[13] Achmad Fedyani Saihddin explained, Conflict is a direct and conscious conflict between individuals or groups to achieve the same goal.[14]

## **2.2 What is Financial Service?**

Financial service is a term used to refer to services provided by financial institutions. Financial services are also used to refer to institutions that handle the management of funds.[15] Financial Services Institutions are institutions that carry out activities in the Banking, Capital Market, Insurance, Pension Fund, Financing Institutions, and Other Financial Services Institutions sectors.[5] Other Financial Services Institutions are pawnshops, guarantee institutions, Indonesian export financing institutions, secondary housing finance companies, and institutions that organize mandatory public fund management, including providers of social security, pension and welfare programs, as referred to in the laws and regulations concerning pawnshops, guarantees, Indonesian export financing institutions, secondary housing finance companies, and mandatory public fund management, as well as other financial service institutions declared to be supervised by the OJK based on laws and regulations.[5]

## **2.3 What is Financial Services Dispute Resolution?**

Settlement of financial services disputes is the same as settlement of other sector disputes, which can be resolved through consensus, litigation, and non-litigation channels, which are known as Alternative Dispute Resolution. The way to resolve financial service disputes when viewed from the point of view of the process can be done through litigation which is a dispute resolution mechanism through the courts using a formal legal approach, or non-litigation which is a dispute resolution mechanism outside the court and does not use a formal legal approach. From the point of view of the decision maker, it can be done adjudicative, a settlement mechanism characterized by decision-making authority (decision is made by a third party in a dispute between the parties), consensual/compromising, through quasi-adjudicative which is a combination of consensual and adjudicative elements.[16]

## **2.4 What is Alternative Dispute Resolution for Financial Services?**

Normatively, dispute resolution out of court is regulated, among others, by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (AAPS Law). Article 1 number 10 of the AAPS Law provides the understanding that Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through a procedure agreed upon by the parties, out-of-court settlement by consultation, negotiation, mediation, conciliation, or expert judgment. The AAPS Law is the umbrella law for alternative dispute resolution institutions in Indonesia. Referring to this regulation, in 2014 the Financial Services Authority (OJK) established OJK Regulation (POJK) No 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector, based on the POJK, OJK established: 1) Arbitration and Mediation Board Indonesian Guarantee Agency (BAMPI), 2) Indonesian Capital Market Arbitration Board (BAPMI), 3) Pension Fund Mediation Agency (BMDP), 4) Indonesian Banking Dispute Settlement Alternative Agency (LAPSPI), 5) Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI), 6) The Indonesian Pawnshops and Financing Mediation Agency (BMPPI). The latest developments OJK stipulates POJK No. No.61/POJK.07/2020 Regarding Alternative Institutions for Settlement of Financial Services Sector Disputes, in the POJK the 6 (six) LAPS will be integrated.

## **2.5 What is Financial Services Authority?**

In accordance with the mandate of Article 34 of Act Number 23 of 1999 concerning Bank Indonesia, it is required to establish a new and independent financial services sector supervisory agency established by law. As an embodiment of the article, the Financial Services Authority (OJK) was formed through Law Number 21 of 2011 concerning the Financial Services Authority. With the formation of a new supervisory authority called the Financial Services Authority, the regulation and supervision of the financial services sector underwent a very fundamental change. The regulation and supervision of the non-bank financial services industry and the capital market which was previously carried out by the Capital Market and Financial Institution Supervisory Agency (Bapepam-LK), since December 31, 2012, has been shifted and implemented by the OJK. Meanwhile, the regulation and supervision of the banking industry, which was previously carried out by Bank Indonesia, since December 31, 2013, has also been shifted and implemented by the OJK. Then based on Law Number 1 of 2013 concerning Microfinance Institutions article 28, the regulation and supervision of Microfinance Institutions is carried out by the OJK starting two years from the promulgation of the Law, starting in 2015. Thus, the OJK is the only regulatory authority and supervision of the financial services industry which has the authority to oversee all formal financial service institutions in Indonesia.[17] The Financial Services Authority, hereinafter abbreviated as OJK, is an institution that is independent and free from interference from other parties, which has the functions, duties, and authorities of regulation, supervision, examination, and investigation as referred to in this Law.[5]

### **3. How is Legal Review of The Regulation Related to Alternative Financial Services Dispute Resolution?**

#### **3.1 Alternative Dispute Resolution (ADR) in the Financial Services Sector Ecosystem**

There are 4 parties in the financial services sector ecosystem, OJK as Policy & Regulatory Framework, The Financial Services Business Actor, Associations and SROs as Infrastructure Provider & Initiative Group, Consumers and Professionals as Community and Profession, and the Financial Services Sector (LAPS-SJK).[18] *The Financial Services Authority* OJK as a supervisory agency & controller capable of encourage consumers & Financial Services Business Actor to use LAPS services, Supervise & monitor, Process & service integrity LAPS, Protect the disputing parties on the LAPS agreement or decision putusan, quality improvement Financial Services Business Actor market behavior. *Financial Services Business Actor* as the “dominant party” in transactions in the financial services sector, does not only play a role in providing infrastructure for the ADR Institution but also as a group that takes the initiative in introducing and including LAPS dispute clauses. *LAPS SJK* not only plays a role in socializing and educating the public and business actors so that awareness is created, but also in building public trust in LAPS SJK, by providing services: fast, fair, effective & efficient. *Consumers* are required to increase their understanding of their rights and obligations, have good faith in working for mutual prosperity. *Non-litigative Professions* are able to act professionally and have the mindset of a noble profession.[9]

Based on Article 3 of POJK No. No.61 / POJK.07/2020 LAPS Financial Services Sector has the following duties and authorities: **First**, carry out the handling and settlement of Consumer Disputes; **Second**, provide consultation on the settlement of Disputes in the financial services sector; **Thrid**, conduct research and development of Dispute settlement services in the financial services sector; **Fourth**, make regulations for the settlement of Disputes in the financial services sector; **Fifth**, cooperate with consumer protection institutions/agencies both nationally and internationally; and **Six**, develop the competence of mediators and arbitrators registered with the Financial Services Sector LAPS. In carrying out its duties and authorities, LAPS SJK adheres to 4 Principles,[9] **First**, Principle of Accessibility, LAPS-SJK is required to have services and procedures for resolving Disputes that are easily accessible to consumers, LAPS-SJK is required to provide services that cover the entire territory of Indonesia, LAPS-SJK are required to develop a communication strategy to improve Consumer understanding of the Dispute settlement process carried out by LAPS-SJK, LAPS-SJK is required to have a page that includes information on LAPS-SJK. **Second**, Principle of Independence, LAPS-SJK must have a supervisor who ensures that LAPS-SJK has fulfilled the requirements to carry out its functions, LAPS-SJK is prohibited from granting veto rights to LAPS-SJK must consult with relevant stakeholders in amending regulations before implementing them. LAPS-SJK must have adequate resources to carry out its functions. **Third** Principles of Justice, LAPS-SJK must have regulations in making agreements and/or decisions. LAPS-SJK is required to provide written reasons for

rejection of the application for settlement of the Dispute; and/or Dispute settlement decision by the arbitrator. *Fourth*, Principles of Efficiency and Effectiveness, LAPS-SJK is required to have a Dispute settlement regulation which contains provisions regarding the period of Dispute settlement, LAPS-SJK shall charge affordable fees to Consumers in the settlement of Disputes, LAPS-SJK must have a Dispute settlement regulation which contains provisions that ensure that LAPS-SJK members comply with and implement every agreement and decision of LAPS-SJK, LAPS-SJK is required to supervise the implementation of the agreement or decision.

### **3.2 Legal Review of POJK No. No.61 / POJK.07/2020 Regarding Alternative Dispute Resolutions Institutions for Financial Services Sector (LAPS-SJK)**

Alternative Financial Services Sector Dispute Settlement Institutions, hereinafter referred to as Financial Services Sector LAPS (LAPS-SJK) are institutions that carry out dispute resolution in the financial services sector out of court.[9] One of the main parties related to LAPS-SJK is Financial Services Business Actor, are Commercial Banks, Rural/Financing Banks, Securities Brokers, Investment Managers, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Institutions, Companies Pawnshops, Guarantee Companies, Information Technology-Based Borrowing-Lending Service Providers, Crowdfunding Service Providers, Microfinance Institutions, Indonesian Export Financing Institutions, PT Permodalan Nasional Madani (Persero), and other financial service institutions that carry out intermediary activities, fund management, and depository of funds in the financial services sector, whether carrying out conventional or sharia business activities, based on the provisions of laws and regulations in the financial services sector.[19]

Complaint settlement by Financial Services Business Actor does not always result in an agreement, resulting in a dispute between the Consumer and the financial services business actor.[8] In the context of providing consumer protection, a dispute resolution mechanism outside Financial Services Business Actor is required, through a court or out of court. Out of court Dispute Settlement can be carried out by the Financial Services Sector LAPS. The settlement process in the Financial Services Sector LAPS is confidential and prioritizes win-win solutions[6], making it more convenient for the parties and able to maintain consumer confidence in the financial services sector. In addition, dispute resolution through the Financial Services Sector LAPS is faster, cheaper and produces an objective, relevant and fair decision or agreement.

The provisions regarding the Financial Services Sector LAPS have previously been regulated in the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. The establishment of the said Financial Services Authority Regulation aims to meet the needs of Consumers in the financial services sector for the resolution of Disputes. However, in its development, the Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector still requires improvements[13] to realize a more effective and efficient LAPS for the Financial Services Sector, as well as responding to technological developments, products and services. increasingly complex financial services and cross-sectoral financial services. Currently, there are 6 (six) Financial Services Sector LAPS registered with the Financial Services Authority, where each Financial Services Sector LAPS is devoted to dealing with certain industrial disputes.

In order to improve the effectiveness and efficiency of the Financial Services Sector LAPS, it is necessary to establish a Financial Services Sector LAPS which handles all disputes in the financial services sector, both conventional and sharia. The establishment of the Institution is expected to result in the same service quality standards for all Consumers and facilitate Consumers in resolving Disputes, including Disputes arising from the use of financial products and services involving more than 1 (one) financial services sector. In addition, the establishment of the Financial Services Sector LAPS is expected to minimize the operating costs of the Financial Services Sector LAPS by utilizing technological developments, while maintaining service quality.

In order to realize the Financial Services Sector LAPS that is able to protect and maintain stakeholder trust, as well as ensure compliance with the provisions of laws and regulations, the Financial Services Sector LAPS needs to have institutions and governance capable of supporting and developing the functions of the Financial Services Sector LAPS.[15] In this regard, the Financial Services Sector LAPS must have arrangements regarding approval, membership and general meeting of members, apply the principles of

good governance, and be managed by parties who always meet the capability requirements.[20] In addition, in providing LAPS services, the Financial Services Sector must also meet the principles of accessibility, independence, fairness, efficiency and effectiveness. That is why the Financial Services Authority (OJK) enacted POJK No. No.61 / POJK.07/2020 Regarding Alternative Dispute Resolutions Institutions for Financial Services Sector (LAPS-SJK). The Financial Services Sector LAPS was established with the aim that Dispute resolution services in the financial services sector: held independently, fairly, effectively and efficiently, and easily accessible; and trusted by consumers and Financial services business actor.

POJK No. 1/POJK.07/2014 is a regulation related to LAPS before POJK No. No.61 / POJK.07/2020 applies. Here are the **main differences** between the two:[9][21]

POJK No. 1/POJK.07/2014	POJK No. No.61 / POJK.07/2020
<b>Financial Services Institutions are required to become members of LAPS-SJK;</b>	Financial Services Business Actor must become a member LAPS-SJK;
<b>Financial Services Institutions is required to implement LAPS decisions;</b>	Financial Services Business Actor is obliged to implement the <b>agreement/decision</b> of the LAPS-SJK
<b>LAPS is in every sector</b>	LAPS-SJK is <b>single</b>
<b>LAPS is required to be registered with OJK</b>	SJK LAPS is <b>required approval</b> from OJK
<b>LAPS provides at a minimum: Mediation, Adjudication, Arbitration</b>	LAPS provides a minimum of: Mediation and Arbitration
	Financial Services Business Actor must pay dues LAPS-SJK

Here are the Crucial Provisions in POJK 61/2020 Impact on the Procedures as follows :

LAPS	LAPS-SJK
LAPS in SJK registered with OJK as regulated in POJK 1/2014, can still accept requests for Dispute settlement from Consumers until 31-12-2020 [Article 48 (1)].	LAPS SJK has been operating since 1-1-2021 [Article 50(1)].
Dispute settlement applications that are received as referred to in paragraph (1) must be completed by LAPS at the registered SJK as stipulated in POJK 1/2014, in accordance with the provisions of the legislation [Article 48 (2)].	The agreement between Financial Services Business Actor & Consumer which contains the selection of a forum for dispute resolution through LAPS in the registered SJK as regulated in POJK 1/2014 which existed before the entry into force of POJK 61/2020 switches to LAPS SJK [Article 47 (2)].
	LAPS-SJK is required to submit in writing the names of Financial Services Business Actor & Consumers who do not implement the LAPS-SJK agreement/decision to OJK <b>no later than 10 working days</b> from the deadline for implementing the agreement/decision [Article 37].

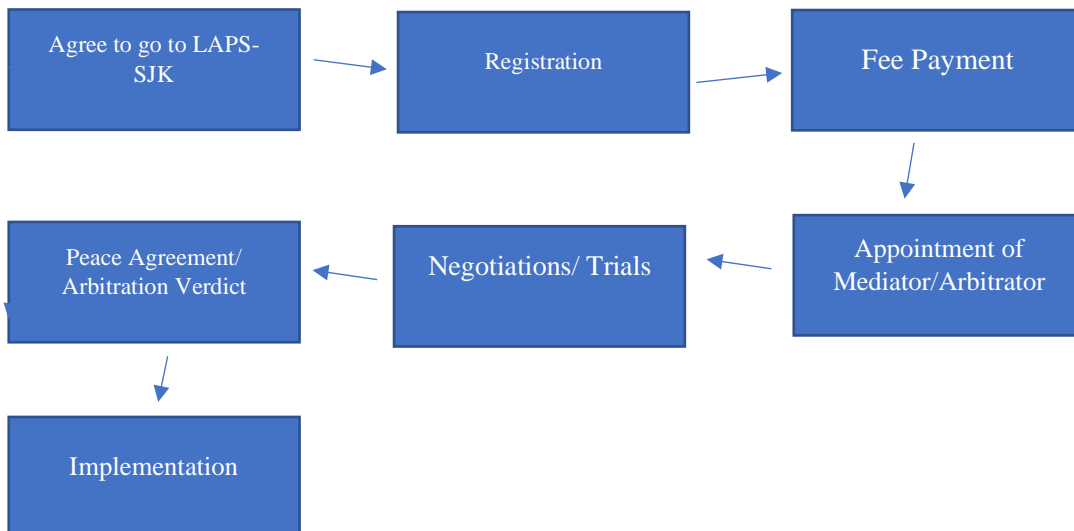
The LAPS-SJK activities are divided into 2, main activities and additional activities, which are as follows:[9]

Main Activities	Additional Activities
Resolve civil disputes, between Consumers vs. Financial Services Business Actor in Financial Services Sector, which have been through Internal Dispute Resolution (IDR) and have not been examined/decided by other (authorized) institutions. Article 32 (1) POJK 61/2020	All other civil disputes in Financial Services Sector: - Financial Services Business Actor vs Consumers - Financial Services Business Actor vs PUJK Financial Services Business Actor, and - other parties. Article 32 (2) POJK 61/2020
At least provide Mediation and Arbitration services for dispute resolution. Article 8 (3) (a) POJK 61/2020	It also provides other services in the form of Binding Opinion.  Article 32 (2) POJK 61/2020
Fulfill the principles, among others: ACCESSABILITY. LAPS-SJK interprets, among others, Online Dispute Resolution (ODR) and free retail & small mediation fees.	Non-retail & small claim dispute resolution is subject to a fee. Organizing Mediation & Arbitration training.

“retail & small claim” is a dispute with a value of up to IDR 500 million, or: IDR 750 million for general insurance; up to IDR 200 million for financing, pawnshops and fintech.

Dispute Settlement Services at LAPS-SJK are divided into 3 types, as follows, Mediation, Arbitration, and Binding Opinions. Scope of Civil Disputes, among others: Conventional & sharia banking, Conventional & Islamic Capital Market, Conventional & sharia insurance, Conventional & Islamic Pension Funds, Conventional & sharia pawnshop, Conventional & sharia financing, Conventional & Islamic Venture Capital, Conventional & sharia guarantee, Conventional & sharia fintech, and other transactions in the financial services sector.

### 3.3 General Stages of Mediation and Arbitration at LAPS SJK



Financial Services Business Actor is required to implement LAPS-SJK Agreement/Decision and SJK LAPS is required to report to OJK regarding Parties who do not implement the Agreement/SJK LAPS decision. The Parties agree that all differences of opinion, disputes and disputes arising from and/or in connection with this Agreement and the implementation of this Agreement (hereinafter referred to as "Disputes"), whether regarding breach of contract, Unlawful Acts or regarding the termination and/or validity of this Agreement, which cannot be resolved by deliberation to reach consensus will be resolved through the LAPS SJK Arbitration which is held according to the rules and procedures of the LAPS SJK Arbitration, located in Jakarta, in the Indonesian language and decided by the Arbitration Council consisting of 3 (three) Arbitrators. The SJK LAPS Arbitration Award is final and binding.

#### 4 Conclusion

LAPS-SJK is not the result of the merger of the previous 6 LAPS, but continues the roles/functions of the 6 LAPS. LAPS SJK is not part of the OJK institution, but is an extension of OJK in consumer protection through Alternative Dispute Resolution. Based on the reviews above it can be concluded that LAPS-SJK have some advantages, as follows: The parties have the sovereignty to choose dispute resolution services, Independent, fair, effective and efficient and easily accessible, Using a consensus approach instead of conflict, Based on good faith, Does not cause hurt or resentment, The parties can continue their business relationship in the future, The result is an agreement that satisfies the parties to the dispute, Generate Commutative Justice, and Win-Win Solution. So we will see together how the development of LAPS-SJK, of course it is hoped that the presence of LAPS-SJK can be the best place for parties in the financial services sector to solve existing problems.

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