

Indonesia and Malaysia's Alternative Models of Dispute Resolution in the Financial Sector

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Article History:

Submitted:

30-01-2025

Received:

08-04-2025

Accepted:

28-08-2025

Keywords:

model; financial
sector; indonesia;
malaysia

Abstract

Indonesia has established the Alternative Institution for Dispute Resolution in the Financial Services Sector, known as LAPS SJK. At the same time, Malaysia has formed the Ombudsman for Financial Services for a similar purpose. Both institutions serve as alternative dispute resolution mechanisms within the financial services sector, aiming to provide fair, efficient, and accessible solutions for financial disputes outside conventional judicial processes. This study examines the dispute resolution models implemented by LAPS SJK and Ombudsman for Financial Services, highlighting their similarities and differences. Additionally, it analyzes the procedural frameworks of both institutions to understand their operational mechanisms for resolving disputes effectively. This research adopts a normative approach and is descriptive. The authors employed a library research method, utilizing secondary sources such as legal documents, institutional regulations, and scholarly literature. Data analysis was conducted qualitatively, and conclusions were drawn using the deductive method to ensure a comprehensive understanding of both models. The findings indicate that LAPS SJK employs a dispute resolution model comprising mediation, arbitration, and binding opinions, whereas OFS utilizes negotiation, mediation, conciliation, and adjudication. The procedural framework of LAPS SJK adheres to its internal regulations, which are based on the Arbitration and Alternative Dispute Resolution Act. In contrast, the procedures under OFS follow the OFS Terms of Reference, grounded in the Financial Services Act 2013 and its related regulations. These differences reflect the distinct legal frameworks and institutional designs governing financial dispute resolution in both countries.

1. Introduction

The banking and finance industry is a fundamental pillar of worldwide economic stability and advancement, exerting significant sway over the complex financial markets and systems network.¹ A country's economic advancement aims to enhance the social welfare of its people. Banks and financial institutions play a significant role in supporting this purpose.² The fundamental principles underlying these sectors are trust, accountability, and honesty.³

¹Hanane Alloui and Youssef Mourdi, "Exploring the Full Potentials of IoT for Better Financial Growth and Stability: A Comprehensive Survey," *Sensors* 23, no. 19 (September 22, 2023): 8015, <https://doi.org/10.3390/s23198015>.

²Ismamudi Ismamudi, Nani Hartati, and Sakum Sakum, "Peran Bank Dan Lembaga Keuangan Dalam Pengembangan Ekonomi: Tinjauan Literatur," *Jurnal Akuntansi Neraca* 1, no. 2 (August 26, 2023): 35-44, <https://doi.org/10.59837/jan.v1i2.10>.

³Toussaint Ciza Bugandwa et al., "Linking Corporate Social Responsibility to Trust in the Banking Sector: Exploring Disaggregated Relations," *International Journal of Bank Marketing* 39, no. 4 (July 5, 2021): 592-617, <https://doi.org/10.1108/IJBM-04-2020-0209>.

Hence, developing a mutual relationship between financial customers and financial service business practitioners is essential to minimize potential conflicts.

The law has established more efficient conflict resolution methods: adjudicatory (or adversarial) and non-adjudicatory procedures. Adjudicatory procedures, often known as litigation, have traditionally been the primary means of resolving legal disputes worldwide, involving a judicial system as the central forum for resolution.⁴

Arbitration and Alternative Dispute Resolution (ADR) exist to address clients' dissatisfaction with complex dispute resolutions through litigation. ADR offers clients a simple, short, straightforward, easy, and cost-effective approach, including potentially free services. It also provides faster resolution than litigation, as there is no need to wait for a judge's decision.⁵

Consumer disputes emphasize amicable settlement, preserving potential future relations between entrepreneurs and consumers. Using alternative dispute resolution methods instead of court proceedings would benefit both parties involved in resolving disputes. ADR is considered more user-friendly due to its cost-effectiveness, fewer formalities, and shorter waiting times. Entrepreneurs benefit from confidentiality, averting potential harm to their reputation and promoting harmonious resolution between parties. Consequently, ADR methods promote a harmonious resolution between the involved parties.⁶

The positive outcomes encourage future researchers to explore innovative methods for integrating ADR into community conflict resolution processes. Further studies could explore specific dispute categories where ADR shows optimal efficacy and analyze contributing elements. Investigating ways to enhance ADR, such as integrating technology or providing advanced training for professionals, can sustain its effectiveness in fostering community well-being.⁷

A well-established institution is crucial for managing disputes, preventing financial losses, and preserving business relationships. Financial conflicts are inevitable due to frequent transactions and can arise from miscommunication, errors, fraud, or differing viewpoints. Besides traditional courts, ADR institutions provide consumers an alternative platform to address grievances with financial service providers, promoting transparency and accountability.⁸

⁴ Samuel Olugbenga Ojo, "Alternative Dispute Resolution (ADR): A Suitable Broad Based Dispute Resolution Model in Nigeria; Challenges and Prospects.," *International Journal of Conflict Management* 4, no. 1 (May 1, 2023): 50–62, <https://doi.org/10.47941/ijcm.1253>.

⁵ Devi Siti Hamzah Marpaung Chairul Ilham, "Analisis Perbandingan Arbitrase Dan Alternatif Penyelesaian Sengketa Dalam Perspektif Undang-Undang Nomor 30 Tahun 1999," *Justicia* 71 (2024), <https://doi.org/http://dx.doi.org/10.31604/justitia.v7i1.%25p>.

⁶ Shakshi Kothari, "Alternate Dispute Resolution Methods In The Redressal Of Consumer Disputes: Prospects And Challenges For India," *Lex Humana (ISSN 2175-0947)* 15, no. 2 (2023): 594–608, <https://seer.ucp.br/seer/index.php/LexHumana/article/view/2687>.

⁷ Khryslar C. Pallasigui Rhem Rick N. Corpuz, John Robert C. Canlapan, John Jasper B. Garcia, Rance S. Lacson, "Assessing The Efficacy Of Court-Annexed Mediation In Dispute Resolution Within Angeles City," *EPRA International Journal of Multidisciplinary Research (IJMR)* 9, no. 11 (2023).

⁸ Ibtisam a.k.a Ilyana Ilias et al., "A Comparative Assessment of Alternative Dispute Resolution for Financial Consumer Protection in Malaysia and Indonesia," *Environment-Behaviour Proceedings Journal* 8, no. SI13 (September 17, 2023): 23–29, <https://doi.org/10.21834/e-bpj.v8iSI13.5041>.

In Indonesia, consumer disputes with financial institutions are first addressed through negotiation or good faith efforts. If unresolved, they may proceed to arbitration facilitated by an alternative institution for financial services dispute resolution, referred to as 'LAPS SJK' under its regulations.⁹ LAPS SJK was established based on the Financial Services Authority Regulation No.61/POJK.07/2020. The Financial Services Authority (or OJK), under Article 29(c) of Law No.21/2011, established OJK. OJK is the sole entity responsible for regulating and overseeing financial services, such as banking, capital markets, insurance, pensions, financing institutions, and other financial services institutions. Alternative dispute resolution options through the LAPS include mediation, arbitration, and binding opinions.

Malaysia has implemented several ADR approaches, including arbitration, mediation, and negotiation. However, the ombudsman remains the most suitable alternative for resolving disputes related to financial issues. Starting in 2016, the Financial Ombudsman Service (OFS) has notably supported Malaysian consumers by offering an alternative channel for impartially settling financial conflicts. This service covers issues concerning banking, insurance, and the Islamic insurance system (takaful), or individual and eligible complainants' motor vehicle claims.¹⁰ The Financial Mediation Bureau, now called OFS, was founded on August 30, 2004, and began its official functions on January 20, 2005. OFS operates as the Financial Ombudsman Scheme authorized by Bank Negara Malaysia (BNM) through the 2013 Financial Services Act and the 2013 Islamic Financial Services Act.

The research that has been conducted before is "A Comparative Assessment of Alternative Dispute Resolution for Financial Consumer Protection in Malaysia and Indonesia" by Ibtisam a.k.a Ilyana Ilias et al. where the focus of the research is on the types of ADR in both countries that successfully managed dispute resolutions in the financial sectors, their supervisory bodies, the regulations governing them, and the strengths and weaknesses of each of these institutions.¹¹ Furthermore, Muhamad Ikhwan Mohd Zain et al conducted a study entitled "Legal Analysis of Malaysia's Integrated Dispute Resolution Scheme: Lessons from Other Countries" which discussed the similarities and differences the current OFS and SIDREC in Malaysia, how can Malaysian regulators adapt and incorporate best practices from Indonesia and Australia to enhance the overall stability of the financial services industry in Malaysia and the legal recommendations that can be suggested to the relevant authorities.¹² Setiyono et al also made a study on "The establishment of LAPS SJK in the trajectory of history viewed from the politics of Indonesian law", where the discussion was about the legal politics

⁹ Erika Ramadhani, "Principle 5Cas an Effort to Settle Problem Financing at Shopepaylater," 1 (Bandung, 2022), <https://proceeding.uingusdur.ac.id/index.php/icis/article/view/1176/497>.

¹⁰ Muhamad Ikhwan Mohd Zain, Nur Ezan Rahmat, and Ibtisam @ Ilyana Ilias, "The Role of Ombudsman: Resolving Financial Disputes in Malaysia," *Conflict Resolution Quarterly* 40, no. 2 (December 7, 2022): 199–212, <https://doi.org/10.1002/crq.21366>.

¹¹ Ilias et al., "A Comparative Assessment of Alternative Dispute Resolution for Financial Consumer Protection in Malaysia and Indonesia." <https://doi.org/10.21834/e-bpj.v8iSI13.5041>

¹² Muhamad Ikhwan Mohd Zain et al., "Legal Analysis of Malaysia's Integrated Dispute Resolution Scheme: Lessons from Other Countries," *Environment-Behaviour Proceedings Journal* 9, no. 28 (March 16, 2024): 253–58, <https://doi.org/10.21834/e-bpj.v9i28.5809>.

of the history of the formation of LAPS SJK in Indonesia.¹³ This research is different from the studies that have been made before because this research emerged from the differences in the models of ADR in the financial sector used by Indonesia and Malaysia and the stages of dispute resolution proceedings using ADR models at LAPS Financial Services and OFS.

Previous research has not comprehensively compared the institutional model of ADR in the financial services sector in Indonesia and Malaysia in terms of procedural effectiveness, legal basis, and cross-border policy implications in the Southeast Asian region. This shows that there is an important gap in the literature that this study aims to answer. This research is theoretically important because it offers a comparative framework in the context of cross-border business law, as well as practically providing a basis for financial authorities to formulate dispute resolution policies that are more responsive to the needs of financial services consumers. The selection of Indonesia and Malaysia as the object of comparison is based on the historical and institutional proximity in which the legal system both adopts a mixture of civil law and common law, and has a developed authority for financial services dispute resolution that develops institutionally, but with different structures and approaches.

In fact, both Indonesia and Malaysia still face challenges such as limited executive authority of ADR institutions, a lack of public participation in non-litigation dispute resolution, and differences in procedural standards that make it difficult to harmonize at the regional level. The findings of this research are expected to contribute to regional policy formulation, especially to encourage the harmonization of financial services consumer dispute resolution systems under the ASEAN Financial Integration 2025 framework, as well as input for authorities such as OJK, Bank Indonesia, and Bank Negara Malaysia in designing cross-border cooperation.

2. Methods

This study will employ a qualitative approach with a comparative analysis to examine alternative dispute resolution models in the financial sector of Indonesia and Malaysia. Data will be collected through document analysis, including legislation, policies, and reports from relevant institutions, as well as semi-structured interviews with experts in financial law and dispute resolution. The study will be conducted using a descriptive-qualitative method to identify similarities and differences in dispute resolution mechanisms between the two countries and assess their effectiveness in providing legal protection for consumers and financial industry players.

3. Results and Discussion

3.1. The Alternative Dispute Resolution Model in the Financial Sector Is Used by Indonesia and Malaysia.

ADR is a mechanism for settling disputes or disagreements using methods approved by the involved parties, typically involving out-of-court resolutions like consultation, negotiation, mediation, conciliation, or expert judgment. A dispute is a disagreement between a consumer and financial services business actors (PUJK). It arises when the PUJK fails to fulfill the agreed-upon agreement or financial transaction documents, resulting in material,

¹³ Setiyono Setiyono et al., "The Establishment of LAPS SJK in the Trajectory of History Viewed from the Politics of Indonesian Law," *Jurnal Hukum Novelty* 15, no. 1 (April 30, 2024): 106, <https://doi.org/10.26555/novelty.v15i1.a28385>.

reasonable, and direct losses or potential losses to the consumer. The dispute may have undergone the process of resolving complaints by the PUJK.

The OJK can facilitate or recommend LAPS as an alternative dispute resolution mechanism for consumers and financial services businesses. The OJK oversees registered LAPS in Indonesia, ensuring compliance with OJK standards. Overall, LAPS and OJK collaborate to ensure adequate legal protection for consumers of financial services in Indonesia. They also promote transparency, fairness, and safety in the financial services industry for consumer benefit.¹⁴ Consumers have the right to be heard, advocated for, fostered, treated fairly, and compensated for adverse discrepancies.¹⁵

LAPS SJK, the sole entity in the financial services domain to have secured an operational license from OJK, commenced its activities on January 1, 2021. It supplants the functions of six preceding entities in the sector: the Indonesian Capital Market Arbitration Board (BAPMI), the Indonesian Insurance Mediation and Arbitration Board (BMAI), the Pension Fund Mediation Board (BMDP), the Indonesian Banking Alternative Dispute Resolution Institute (LAPSPI), the Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPI), and the Indonesian Financing, Pawnshop, and Venture Mediation Board (BMPPVI). Simultaneously, it broadens its jurisdiction to include dispute resolution within the Fintech sector.¹⁶

The six previous LAPS were governed by POJK No. 1/POJK.07/2014, which pertains to Alternative Dispute Resolution Institutions in the Financial Services Sector. However, this regulation has been nullified by POJK No. 61/POJK.07/2020. In the transitional provisions of POJK No. 61/POJK.07/2020, it is mandated that all agreements between financial services entities (PUJK) and consumers concerning the designation of dispute resolution platforms through LAPS governed by POJK No. 1/POJK.07/2014 are transferred to the Financial Services LAPS governed by POJK No. 61/POJK.07/2020. Similarly, LAPS SJK, registered under POJK No. 1/POJK.07/2014, can still receive consumer complaints until December 31, 2020, and resolve them according to applicable laws and regulations. However, not all disputes between consumers and PUJK can be resolved through LAPS SJK.

LAPS SJK cannot resolve all disputes between consumers and PUJK. In principle, LAPS SJK only handles disputes that meet certain criteria. First, the dispute submitted is not in the process of being examined or has not been decided by a judicial, arbitration, or other alternative dispute resolution institution. This means that the dispute must be a new case that has never been legally resolved before. Second, disputes that can be handled by LAPS SJK are civil in nature. This means that the dispute relates to the rights and obligations between the

¹⁴ Nindi Dwi Tetria Dewi, Laurina Trisnaning Putri, Syahrul Khoirun Ni'am, Eka Wahyu Hestya Budianto, "Mapping Research Topics on the Financial Services Authority (OJK): VOSviewer Bibliometric Study and Literature Review.," 2023, https://www.researchgate.net/profile/Eka-Wahyu-Hestya-Budianto/publication/376205558_Mapping_Research_Topics_on_the_Financial_Services_Authority_OJK_VOSviewer_Bibliometric_Study_and_Literature_Review/links/656e8e3f5985071c7bee6e3e/Mapping-Research-Topics-

¹⁵ Juni Desiani and N.G.N Renti Maharaini Kerti, "Perlindungan Konsumen Atas Informasi Yang Tidak Jelas Menurut Undang-Undang Perlindungan Konsumen," *Reformasi Hukum Trisakti* 5, no. 1 (February 1, 2023): 165-74, <https://doi.org/10.25105/refor.v5i1.15251>.

¹⁶ Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan, "Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan," lapssjk.com, 2022, <https://lapssjk.id/>.

parties in civil law, not a criminal or administrative dispute. Third, in addition to these two main criteria, LAPS SJK can also handle other disputes that have received special approval from the OJK. This provides flexibility for the SJK LAPS to accommodate certain types of disputes that it deems appropriate and in accordance with its authority.

Every incoming financial consumer complaint, whether through the Application for Consumer Protection Portal (APPK) or non-APPK channels, initially undergoes verification. This verification assesses whether the consumer's dispute can be handled through LAPS SJK. If the dispute falls within the scope of disputes that LAPS SJK can facilitate, it will proceed to resolution through three alternative dispute resolution models, as follows:

a. Mediation

Mediation, a form of ADR, involves an impartial third party facilitating voluntary negotiation between disputing parties. It is often preferred over traditional litigation or arbitration for its promptness, cost-effectiveness, and ability to maintain relationships.¹⁷ A neutral third party facilitates dispute resolution through skilled communication and negotiation in mediation. It is an organized, interactive process where participants are encouraged to actively address the parties' needs, rights, and interests, following a 'party-centered' approach.¹⁸

Existing alternative dispute resolution fora outside the court system must comply with Law Number 30 of 1999 on Arbitration and Alternative Dispute Resolution (Law No. 30/1999), including mediation. Updating technical regulations for mediation stages, including direct and digital methods, is crucial. The current practice focuses on restoring parties' agreements through mediation.¹⁹ Mediation conducted through LAPS SJK can be face-to-face or online. Online mediation offers convenience, cost-effectiveness, and accessibility, but it poses technical difficulties, security concerns, confidentiality issues, and the need for parties to access technology.²⁰

One of the critical aspects of online mediation is ensuring the confidentiality and security of sensitive information. A mediator's responsibility and ethical duty is to safeguard this information, preventing unauthorized disclosure to unwanted parties. Such confidential and sensitive information has made it a hot commodity for hackers, who can exploit it for financial gain. While much of the information on the mediation parties may not hold legal significance, it remains a private matter. A wise mediator ensures that all information conveyed to them is kept secure, thereby contributing to the success of the mediation process.²¹

¹⁷ David Tan, "The Singapore Convention on Mediation to Reinforce the Status of International Mediated Settlement Agreement: Breakthrough or Redundancy?," *Conflict Resolution Quarterly* 40, no. 4 (May 29, 2023): 467-82, <https://doi.org/10.1002/crq.21377>.

¹⁸ L. Dias, D. M., Quintão, H., Pereira, L., Vieira, P., Lafraia, J., & Barbosa, "Mediation & Dispute Board Resolution: A Systematic Literature Review.," *GPH-International Journal of Social Science and Humanities Research*, 6, no. 5 (2023), <https://doi.org/https://doi.org/10.5281/zenodo.7952719>.

¹⁹ Kristianus Jimmy Pratama, "Devising An Indonesian Legal Architecture For Metaverse Banking: Challenges And Opportunities," *Journal of Central Banking Law and Institutions* 2, no. 1 (January 2023): 1-24, <https://doi.org/10.21098/jcli.v2i1.48>.

²⁰ Ashutosh Mishra, "Online Mediation: Prospects and Challenges in India.," *RES MILITARIS* 13, no. 3 (2023), <https://resmilitaris.net/index.php/resmilitaris/article/view/3847>.

²¹ Mohd Zamre Mohd Zahi Nur Khalidah Dahlan1, Mohammad Al-Saif Aziz Azman1, Ramalinggam Rajamanickam1, "Online Mediation: Issues, Applications and Challenges.," *Asian Journal of Research in*

The framework for resolving disputes via the mediation approach at LAPS SJK is outlined in LAPS SJK Regulation No. PER-01/LAPS-SJK/I/2021, which addresses Mediation Rules and Procedures. This is elaborated further in Article 2, Section 3 of the aforementioned regulation, disputes eligible for resolution through the mediation model at LAPS SJK are limited to those between the parties with specific dispute criteria, as follows:

- 1) An attempt at internal dispute resolution through deliberation to reach a consensus between the parties (Internal Dispute Resolution) has been made;
- 2) This process is founded upon the existence of a mediation agreement between the involved parties and the filing of a mediation registration request by either one or both parties and;
- 3) Any dispute arising from or related to any agreement or transaction within the financial industry, whether conventional or Sharia-compliant:
 - a) banking;
 - b) capital market;
 - c) insurance;
 - d) pension fund;
 - e) pawnshop;
 - f) financing;
 - g) venture capital;
 - h) credit guarantee;
 - i) financial technology;
 - j) payment system;
 - k) any hybrid product combining elements of one financial product with another;
 - l) any derivative product derived from the financial products mentioned above;
 - m) any other products or transactions designated as financial products or transactions according to applicable laws and regulations;
 - n) any other products or transactions under the supervisory authority of OJK and/or Bank Indonesia;
 - o) other transactions and activities conducted by the parties in the financial services sector, including:
 - 1) restructuring financial services business actors;
 - 2) rating of companies and securities;
 - 3) Repo transaction on debt and any equity securities.

b. Arbitration

The arbitration agreement constitutes a mutual understanding between the parties involved in settling disputes via arbitration, detailing all or particular disputes that have arisen or may arise regarding a specified legal relationship. The agreement may specify its nature as

contractual or non-contractual, either within a contract or as a separate agreement. Legally, it is considered distinct from the underlying contract regardless of its format.²²

Arbitration prioritizes substantive justice over technicalities, as arbitral proceedings are typically less burdened by the technicalities and complexities often seen in traditional court proceedings. Arbitration prioritizes substantive justice over technicalities, being more liberal and less burdened by complexities than traditional court proceedings. Alternatively, arbitration shields parties from the strict formalities usually linked with court trials. The flexibility of arbitration guarantees swift dispute resolution, unlike litigation, where cases may linger in the High Court or Customary Court, causing years of stress and trauma before reaching the Supreme Court. Unlike litigation, arbitration is more cost-effective with its flexible procedures, allowing non-lawyers to represent parties.²³

Disputes eligible for resolution through the arbitration model at LAPS SJK are those between the parties that meet the criteria outlined in LAPS SJK Regulation No. PER-02/LAPS-SJK/I/2021 regarding Arbitration Rules and Procedures, as follows:

- 1) First, an attempt at internal dispute resolution through deliberation to reach a consensus has been made between the parties;
- 2) The arbitration procedure hinges on the presence of an arbitration agreement between the parties, along with the filing of an arbitration registration request by one or both of the parties involved;
- 3) Any disputes arising from the financial industry agreements or transactions mentioned below, including both conventional and Sharia-compliant agreements fall within the scope of this provision:
 - a) banking;
 - b) capital market;
 - c) insurance;
 - d) pension fund;
 - e) pawnshop;
 - f) financing;
 - g) venture capital;
 - h) credit guarantee;
 - i) financial technology;
 - j) payment system;
 - k) any hybrid product between one financial product and another;
 - l) any derivative product of the above financial products;
 - m) other products/transactions that are designed as financial products/transactions according to the prevailing laws and regulations;

²² Abel Mathias Ngilangwa, "Challenges of Implementing Arbitration Agreements in Tanzania: A Comprehensive Review," *Journal Of Alternate Dispute Resolution* 2, no. 2 (2023): 17, <https://jadr.thelawbrigade.com/article/challenges-of-implementing-arbitration-agreements-in-tanzania-a-comprehensive-review/>.

²³ Chinedu K OKPALA and C E IBE, "A Review Of The Impact Of Domestic Arbitration Practice In Administration Of Justice In Nigeria," *International Journal Of Comparative Law And Legal Philosophy (IJOCLLEP)* 5, no. 2 (2023).

- n) Other products/transactions that are under the supervisory authority of OJK and/ or Bank Indonesia;
- o) Other transactions and activities carried out by the parties in the financial services are as follows:
 - 1) restructuring of financial services business actors;
 - 2) company and securities ratings;
 - 3) repo transactions on debt and equity securities.

c. Binding Opinion

Even if there is no existing dispute, LAPS SJK can still entertain a request from the parties involved in an agreement to offer a binding opinion on a matter concerning the agreement, such as:

1. Interpretation of unclear provisions, additions, or changes to provisions that relate to the emergence of new circumstances;
2. and others regarding the specific legal relationship of an agreement;²⁴
3. Dissenting opinions are presented for resolution through the binding opinion process at LAPS SJK, as stipulated in LAPS SJK Regulation No. PER-03/LAPS-SJK/I/2021 concerning Binding Opinion Rules and Procedures, are required to satisfy the following criteria:²⁵
4. An effort has been made by the parties themselves to settle through discussion and reach a mutual agreement in advance.
5. It relies on a binding opinion agreement between the involved parties, accompanied by the submission of a binding opinion application registration by either one or both parties;
6. Any differential opinion arising out of or in connection with any agreement/transaction in the financial industry mentioned below, conventional or sharia:
 - a) banking;
 - b) capital market;
 - c) insurance;
 - d) pension fund;
 - e) pawnshop;
 - f) financing;
 - g) venture capital;
 - h) credit guarantee;
 - i) financial technology;
 - j) payment system;
 - k) any hybrid product between one financial product and another;
 - l) any derivative product of the above financial products;
 - m) other products/transactions that are designed as financial products/transactions according to the prevailing laws and regulations;

²⁴ lapssjk, "Pengertian Pendapat Mengikat," lapssjk.com, 2023.

²⁵ LAPS SJK Regulation Number: PER-03/LAPS-SJK/I/2021 Concerning Binding Opinion Regulations and Procedures, Article 2 Paragraph (3)

- n) Other products/transactions that are under the supervisory authority of OJK and/or Bank Indonesia;
- o) Other transactions and activities carried out by the parties in the financial services sector are as follows:
 - 1) restructuring of financial services business actors;
 - 2) company and security ratings;
 - 3) repo transactions on debt and equity securities.

Meanwhile, OFS uses an alternative dispute resolution model:

a. Mediation

This approach is utilized as a dispute resolution technique in the initial stage of case management in the dispute resolution process of OFS. The mediation method is extensively used in Malaysia and has gained acceptance in various forms of dispute resolution due to its collaborative and less confrontational nature, which distinguishes it from traditional litigation.

The House of Representatives enacted the Malaysian Mediation Act 2012 (MMA, 2012) on April 2, 2012, and subsequently passed by the Senate on May 7, 2012. The royal assent for the MMA 2012 was granted on June 18, 2012. It was officially gazetted on June 22, 2012, and took effect on August 1, 2012. The long title of the MMA 2012 is as follows: "An Act aimed at fostering and advocating for mediation as an ADR method by formalizing the mediation process. This legislation seeks to aid parties in resolving disputes fairly, swiftly, and cost-effectively, while also tackling associated issues." This act comprises twenty sections, one schedule, and seven parts: preliminary, the mediation commencement, mediator, mediation process, the mediation conclusion, confidentiality and privilege, and miscellaneous.²⁶

The inaugural online mediation in Malaysia commenced in early 2017 through www.mediate2resolveonline.com. Tunku Alina Alias and Gunavathi Subramaniam, acting as mediators, introduced and facilitated the event privately. This online mediation service operates by the Malaysian Mediation Act 2012. It facilitates mediation for various disputes, with a particular emphasis on commercial matters.²⁷

b. Adjudication

If the financial consumer wishes to proceed to the second stage, which involves the involvement of an ombudsman officer, they can choose to use the adjudication model. In this model, it refers to the process where the Ombudsman adjudicates a Dispute and makes a final decision, including granting an Award by these TOR.²⁸ The ombudsman officer will review all evidence and make a final decision on the dispute. This decision is binding on the financial institution but not on the consumer, who can still pursue legal action if unsatisfied with the outcome.²⁹

²⁶ Nur Ezan Rahmat et al., "Mediation as an Alternative Mechanism to Resolve Family Disputes in Malaysia: A Comparative Analysis with Australia and New Zealand," *Intellectual Discourse* 30, no. 2 (December 29, 2022), <https://doi.org/10.31436/id.v30i2.1818>.

²⁷ Nur Farahiyah Mohd Nasir, Zinatul Ashiqin Zainol, and Muhamad Helmi Md. Said, "Prospect and Challenges of Using Online Mediation in Resolving Domestic Violence," *International Journal of Psychosocial Rehabilitation* 24, no. 1 (January 20, 2020): 621–32, <https://doi.org/10.37200/IJPR/V24I1/PR200168>.

²⁸ Paragraph 2 of OFS Terms of Reference

²⁹ Paragraph 34 of OFS Terms of Reference

Although in Malaysia, the Construction Industry Payment and Adjudication Act (CIPAA) of 2012 is the law that primarily focuses on using the adjudication model for construction disputes, the OFS has decided to apply a similar model to financial issues through the OFS-assigned ombudsman. Adjudication can occur either by submitting documents, such as written submissions, replies, and clarifications, if necessary, or by conducting a hearing. The adjudication will be carried out with the utmost confidentiality, and any communication will not be admissible in any legal proceedings.³⁰ A similar practice of implementing an adjudication model can be seen in Malaysia's Security Industries Dispute Resolution Centre (SIDREC), which existed to resolve financial disputes within the securities industry, providing a streamlined and efficient process for both parties involved.³¹

Regarding eligibility, only financial consumers who have used or previously used any financial services or products provided by a member for personal, domestic, or small business purposes may seek recourse to the OFS for grievance resolution (Paragraph 9 of the TOR). Individuals affiliated with licensed banks, insurers (excluding certain types), takaful operators, development financial institutions, approved issuers of Islamic payment instruments, insurance brokers, takaful brokers, financial advisers, and Islamic financial advisers must be members of the OFS (Paragraph 4 of the TOR).³² The criteria for disputes that can be resolved at OFS are:

- 1) Banking services, including Islamic banking, payment system products, insurance, and takaful claims are covered up to RM 250,000.00;
- 2) Third-party property damage insurance/motorcycle takaful claims up to an amount of RM 10,000.00;
- 3) Unauthorized transactions conducted through specified payment methods like Internet banking, mobile banking, ATMs, or unauthorized check use are protected up to RM 25,000.00.

Table 1: Differences in Dispute Criteria between LAPS SJK and OFS

LAPS SJK	OFS
<ol style="list-style-type: none"> 1. While PUJK has addressed the complaint, the consumer either rejected the resolution or did not receive a response as required by the OJK Regulation on consumer complaint services in the financial sector; 2. The submitted Dispute is not currently being processed or has been resolved by a court, arbitration, or another alternative dispute resolution entity; 3. The dispute is civil; 	<ol style="list-style-type: none"> 1) Banking services, including Islamic banking and Payment Systems, along with insurance and takaful claims, are protected up to RM 250,000.00; 2) Claims for third-party property damage in motor insurance/takaful are protected up to RM 10,000.00; 3) Unauthorized transactions made using specified payment methods like Internet banking, mobile banking, ATMs, or unauthorized cheque usage are safeguarded up to RM 25,000.00

³⁰ofs, "Terms and Procedures of Adjudication," ofs.com, 2022, https://www.ofs.org.my/file/files/OFS_Terms_and_Procedures_of_Adjudication_new.pdf.

³¹ Mohd Zain et al., "Legal Analysis of Malaysia's Integrated Dispute Resolution Scheme: Lessons from Other Countries."

³² Ibtisam Ilyana Ilias et al., "Consumer Credit Grievance And Redress Mechanisms: The Malaysia Perspective," *UUM Journal of Legal Studies* 12, no. Number 2 (July 5, 2021): 61-88, <https://doi.org/10.32890/uumjls2021.12.2.4>.

4. Other disputes that OJK has approved.

LAPS SJK regulates dispute resolution fees based on retail and small claims as well as non-small claims (commercial claims). Retail and small claims are cases with a dispute value as follows:³³

- 1) Up to Rp 200.000.000,00 (two hundred million rupiahs) for disputes in the financing, pawnshop, and financial technology sectors;
- 2) Up to Rp 500.000.000,00 (five hundred million rupiahs) for disputes in the banking sector, capital market, insurance for life insurance claims, venture capital, and credit guarantee;
- 3) Up to Rp 750.000.000,00 (seven hundred fifty million rupiahs) for the insurance sector disputes for general insurance claims.

Disputes in the small and retail claims category at LAPS SJK are exempt from dispute resolution service fees.³⁴

Based on the explanation above, the authors can be concluded from the comparison between the ADR models in Indonesia and Malaysia. Philosophically, the Malaysian legal system is rooted in the common law tradition, which allows greater room for ADR autonomy, including the mediation and adjudication models run by the OFS. OFS is semi-judicial and relatively independent of the regulator's direct oversight. On the other hand, Indonesia adopts a civil law system, where the LAPS SJK operates under the supervision and administrative control of the OJK. LAPS SJK is not an independent institution in the sense of judicial autonomy, but part of the administrative governance in the financial sector supervision system.³⁵

In terms of the value of claims that can be settled, there are different approaches that reflect different consumer protection philosophies. Malaysia limits the maximum claim value in OFS to RM 250,000 for general disputes and RM 10,000 for third-party claims in vehicle insurance. This shows that OFS is designed to handle small to medium-value disputes, with a focus on efficiency, speed, and retail consumer protection. Meanwhile, LAPS SJK in Indonesia handles disputes with a much higher claim value, up to IDR 750 million, depending on the financial services sector. This shows Indonesia's tendency to open ADRs to a wider spectrum of disputes, including those of high commercial value, but remain under the administrative control of regulators.

However, both systems still face significant institutional challenges. In Indonesia, the results of the mediation of the LAPS SJK do not necessarily have binding legal force unless they are stated in a peace deed passed by the court. This creates legal uncertainty in the implementation of peace agreements. In addition, the potential power imbalance between

³³ LAPS SJK Regulation Number: PER-06/LAPS-SJK/I/2021 Concerning Dispute Resolution Service Fees, Article 19 Paragraph (1)

³⁴ LAPS SJK Regulation Number: PER-06/LAPS-SJK/I/2021 Concerning Dispute Resolution Service Fees, Article 19 Paragraph (2)

³⁵ Tamiarisa Amanda Fasa Rambe et al., "Kewenangan Badan Penyelesaian Sengketa Konsumen Kota Medan Memeriksa Sengketa Konsumen Jasa Keuangan Pasca Terbentuknya Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan," *Locus Journal of Academic Literature Review*, June 23, 2022, 109-16, <https://doi.org/10.56128/ljoalr.v1i2.57>.

financial services business actors and consumers in the arbitration process has not received serious attention. Businesses tend to have greater legal resources and procedural experience, which can result in dominance in the ADR process, especially if consumers do not obtain adequate legal assistance.

There is still a potential for jurisdictional overlap between LAPS SJK and other institutions such as the court, Bank Indonesia, and consumer protection institutions such as the Indonesian Consumer Institute Foundation. This overlap not only creates legal uncertainty, but can also prolong the dispute resolution process, contrary to the efficiency principle that is the main advantage of ADR. In fact, the institutional structure and legal philosophy of each country have a direct impact on the effectiveness and legitimacy of dispute resolution mechanisms. Malaysia tends to prioritize a trust-based quasi-judicial approach to independent institutions, while Indonesia places ADR within a strict administrative oversight framework.

The legitimacy and effectiveness of LAPS SJK as an alternative dispute resolution institution in the financial services sector must of course, be supported by strengthening the integrated legal substance of all regulations governing the financial services sector. This form of strengthening the legal substance can be in the form of the formation of new norms in the law that regulates the absolute competence of the LAPS SJK as an alternative dispute resolution institution that is single and special only to disputes that arise in the financial services sector.

In addition, strengthening the substance of the law can also be done by establishing procedural or procedural law norms that are certainly linear and do not contradict the current rules of civil procedural law and the new draft civil procedural law. This will give a new color to LAPS SJK as the sole institution for alternative dispute resolution in the financial services sector that has the competence to carry out quasi-judicial so that it has relative similarity with court institutions whose structure and legal substance have been strengthened by existing legislation. Such a strengthening will certainly show that LAPS SJK will become a quasi-judicial institution based on independence and trust like the OFS formed in Malaysia.

3.2. Stages of Dispute Resolution Proceedings Using Alternative Dispute Resolution Models at LAPS SJK and OFS

The financial sector is evolving due to the internet, technological advancements, deregulation, globalization, and changing competitive and regulatory dynamics. Effective consumer protection depends on robust enforcement mechanisms and regulatory body capabilities. Strengthening institutional capacities through improved training programs and resource allocation is essential for enforcing consumer laws effectively. Additionally, minimizing dispute resolution delays and addressing case backlogs in consumer courts and forums is crucial for timely justice delivery.³⁶ The stages of dispute resolution proceedings using the alternative dispute resolution model at LAPS SJK and OFS:

a. LAPS SJK

³⁶ Tehseenullah Khan, Muhammad Hamza Zakir, and Muhammad Zafar Iqbal, "Comparative Analysis of Consumer Laws in Pakistan and India," *Journal of Social Sciences Review* 3, no. 2 (June 30, 2023): 1162–75, <https://doi.org/10.54183/jssr.v3i2.363>.

In resolving disputes between financial consumers and PUJK, LAPPS SJK uses the dispute resolution provisions set out in Law No.30/1999 concerning Arbitration and ADR. This law is the legal basis for the implementation of alternative dispute resolution in Indonesia.

1) Mediation

Mediation, an alternative dispute resolution method, aims to reach a fair agreement that satisfies all parties involved. Its success depends on both parties' willingness to engage. Mediation can produce a conclusive agreement, eliminating the need for a trial. The agreement's effectiveness depends on party consent, with enforcement overseen by a judge. With *resjudicata* authority, the agreement can be enforced in court if parties do not comply voluntarily, risking legal challenges for non-compliance.³⁷

In the modern era of innovation, e-commerce, and rapid progress, technology has significantly transformed dispute resolution. Disputes have become a thriving industry in the digital age, highlighting the growing importance of effective resolution solutions. Understanding the role of Online Dispute Resolution (ODR) hinges on establishing a clear definition.³⁸ ODR involves using information and communication technologies to help individuals prevent and resolve disputes, offering a more straightforward, faster, and more effective approach than traditional ADR methods. In line with Article 1338 of the Civil Code, contracts legally bind the parties involved (*pacta sunt servanda* principle), functioning as the law between them. The agreement can only be revoked by mutual consent or for reasons specified by law and must be executed in good faith.³⁹

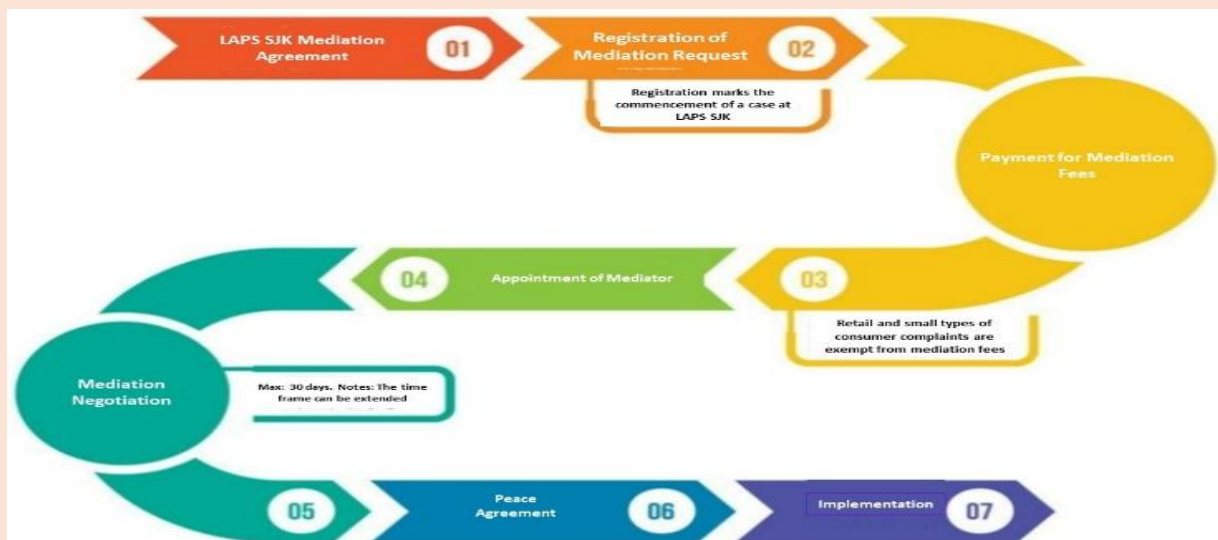


Figure 1: Overview of Mediation Procedures at LAPPS SJK.⁴⁰

³⁷ Griselda MATSUI-SANTANA, Mauricio Ernesto LÓPEZ-RAMOS, and Carlos Alfredo ONGAY-FLORES, "Health Mediation - the Aseptic System for Conflict Management in Health," *Revista Ciencias de La Salud*, July 30, 2023, 14–20, <https://doi.org/10.35429/JOHS.2023.28.10.14.20>.

³⁸ Hanny Hilmia Fairuza, Nadhila Citra Supriantoro, and Ardani Rizky Trianto, "Conceptualizing the Establishment of BPPKE: Legal Protection for Businesses in Indonesia," *Jhbhc*, April 23, 2024, 58–68, <https://doi.org/10.30996/jhbhc.v7i2.10502>.

³⁹ A Basuki Babussalam Suryawansyah Suryawansyah, "Resolution Of Sharia Banking Disputes Through The Religious Courts And The National Sharia Arbitration Board (BASYARNAS)," *De Lega Lata: Jurnal Ilmu Hukum* 9, no. 1 (2024): 105, <https://doi.org/https://doi.org/10.30596/dll.v9i1.18257>.

⁴⁰ Lapssjk, "Proses Mediasi," lapssjk.com, 2023, <https://lapssjk.id/proses-mediasi/>.

The procedure for using the mediation model at LAPS SJK based on LAPS SJK Regulation No. PER-01/LAPS-SJK/I/2021 concerning Mediation Rules and Procedures is as follows:

- a. The parties agree to use the mediation model at LAPS SJK as a dispute resolution mechanism, as stated in the mediation agreement formed before or after the dispute arises. Technically, a mediation agreement can be made through several legal means. First, the agreement can be stated directly in the dispute resolution clause in the main agreement between the parties. Thus, from the beginning, the parties have agreed that if a dispute occurs, the resolution will be pursued through mediation. Second, a mediation agreement can also be realized in a document that is specifically signed by the parties to the dispute. This document is written evidence of mutual agreement to take the mediation route. In addition, a mediation agreement can also be made in the form of an agreement contained in the correspondence between the parties. Even though it is done through correspondence, as long as there is a clear agreement, the agreement still has legal force. Finally, along with the development of technology, mediation agreements can be made through an electronic system, as long as they comply with the provisions of applicable laws and regulations. This method provides convenience and flexibility for the parties to agree, without having to meet physically.
- b. Submitting the registration of an application for mediation to the LAPS SJK submitted by one or more parties as the applicant. In the mediation process of financial disputes, there are several important information that must be included in the mediation application document so that the process can run smoothly and transparently. First, the full identities of the parties to the dispute, including their full names and their place of residence or domicile, must be clearly stated. This is important to ensure clarity on the legal subjects involved in the dispute. Furthermore, the type of financial dispute that is the subject of the problem also needs to be explained in detail. This explanation helps the mediator and related parties understand the context and scope of the dispute to be resolved. An application to hold mediation must be formally submitted, demonstrating the good faith of the parties to resolve the dispute through mediation. The document also needs to include information about the existence of a previous mediation agreement, if it has indeed been made, as a legal basis for the implementation of mediation. In addition, it is important to include information that efforts to resolve disputes through deliberation for consensus or internal settlement have been carried out before. This shows that mediation is taken as a follow-up step after internal peace efforts have been unsuccessful. The application document must also contain a summary of the core of the dispute that occurred, so that the mediator can get a clear picture of the problem at hand. Finally, as support, it is necessary to attach photocopies of documents or other supporting evidence that are relevant to the points above, ranging from identity, type of dispute, to previous settlement efforts. This evidence becomes a strong basis in the mediation process to ensure the truth and validity of the claims submitted. The mediation request will be verified, and LAPS SJK management will confirm acceptance or rejection within five days of registration. If the mediation request is rejected, a confirmation letter with reasons is sent to the applicant. If accepted, it is recorded in the LAPS SJK case register book, and an acceptance letter is

issued. The acceptance confirmation letter, along with a copy of the mediation request for the respondent, is delivered to the parties. It includes the secretary's name, the mediation fees calculation, and the mediator appointment stage.⁴¹

- c. Payment of mediation fees consisting of the mediation application registration fee, administration fee, mediator honorarium fee, meeting fee, and mediation result implementation fee. In addition to these costs, on a case-by-case basis, LAPS SJK may determine additional mediation costs related to the participation of third parties in the LAPS SJK mediation process. However, these statutory fees may be waived for disputes that the Financial Services LAPS categorizes as retail and small claims.
- d. A mediator must be appointed within ten days of the date of the confirmation letter. Parties agree on the mediator, except for retail and small claim disputes, where LAPS SJK management makes the appointment. If parties have yet to agree on a mediator within ten days of the confirmation letter, LAPS SJK management will appoint one within seven days. The appointed mediator must confirm acceptance or rejection within seven days of receiving the appointment letter. Accepted mediators sign a confirmation of willingness letter and a conflict of interest statement. To be appointed as a mediator in the mediation process at LAPS SJK, a mediator must meet a number of administrative requirements and criteria that have been set. First, the person concerned must have the status of a LAPS SJK mediator, which means that he has been appointed by the LAPS SJK management as a permanent mediator and is listed in the list of LAPS SJK mediators. In addition, the mediator must not be under sanctions from the management of LAPS SJK in the financial services sector, to maintain integrity and trust in the mediation process. The mediator must also not be under investigation by the Ethics Board, to ensure that there are no potential ethical violations that could affect his or her neutrality. Good physical and mental health is also an absolute requirement for a mediator. This is necessary so that the mediator can carry out his duties effectively and professionally in facilitating dispute resolution. Finally, the mediator must be free from conflicts of interest as stipulated in Appendix II of the LAPS SJK Regulation No. PER-01/LAPS-SJK/I/2021 concerning Mediation Rules and Procedures. This is important to ensure that the mediator can act objectively and impartially, either of the parties to the dispute.
- e. The mediator leads the negotiation stage of the mediation process. The mediation conducted by the mediator has a maximum duration of thirty days from the date of appointment, extendable by agreement of the parties and the mediator, but within the initial thirty-day period. If mediation extends beyond the initial period, a second extension may be granted with the mediator and LAPS SJK management approval, contingent upon the parties' willingness to continue. Additional costs, including administrative fees and mediator honorarium, will be reasonably calculated.
- f. The mediator may request the management of the LAPS SJK to appoint a co-mediator with the consent of the parties.

⁴¹ Armansyah Armansyah and Adfiyanti Fadjar, "Regulation of Corporate Social Responsibility through Environmental Development Program: A Review from a CSR Perspective," *Jhbbc*, April 30, 2024, 86–102, <https://doi.org/10.30996/jhbbc.v7i2.10724>.

- g. The mediator can initiate negotiations by summoning the parties or holding separate meetings (caucuses) with one party, ensuring equal opportunities for both.
- h. If necessary, the mediator, with the parties' consent, may invite one or more other parties to be examined and will be heard as witnesses, experts in specific fields, or third parties in the hearing process.
- i. Meetings, caucuses, and hearings are conducted by the mediator together with the parties via face-to-face meetings or other platforms, such as telephone, conference, or video conference.
- j. The final stage of mediation results can be either no settlement agreement is reached, or a settlement agreement is reached. If mediation does not result in a settlement agreement, the parties can make other efforts, including submitting a settlement offer using the arbitration model provided by LAPS SJK. The mediator may declare that the mediation ends without an agreement being reached if any of the following conditions occur. *First*, if, within the predetermined mediation period, the parties have not succeeded in reaching an agreement peacefully. Usually, the mediation period lasts a maximum of 30 days from the time the mediator is appointed, and can be extended by mutual agreement, but if an agreement is still not reached, the mediation is declared a failure. *Second*, if the dispute involves assets, property, or interests related to a third party, the successful settlement of mediation requires the involvement of the third party. The absence or non-involvement of these third parties may hinder the achievement of a peaceful solution. *Third*, if one of the parties withdraws or is not present in the mediation process, this can cause the mediation to be unable to continue and end without an agreement. *Fourth*, if one of the parties shows bad faith during the mediation process, such as not being cooperative or obstructing the mediation, the mediator is authorized to declare that the mediation failed to reach an agreement. These four conditions are the basis for the mediator to end the mediation process without an agreement, so the parties must look for other alternative dispute resolutions, such as through arbitration or the court. A mediation resulting in a peace agreement is documented and signed by the parties, with the mediator as a witness. It includes a clause confirming the resolution of the dispute outlined in the mediation request. The peace agreement is final and binding, mandating good faith implementation and precluding challenges. The settlement agreement can be upgraded to a deed of settlement if the parties express their intention within the agreement. They can then request arbitration from LAPS SJK management, who will facilitate the conversion through special procedures. LAPS SJK oversees the implementation of the peace agreement through various stages, requiring PUJK to adhere to agreements from mediation organized by LAPS SJK. As per Article 37 of OJK Regulation No. 61/POJK.07/2020 regarding LAPS SJK, LAPS SJK must provide written notification to PUJK and consumers who must implement its agreements or decisions within ten days of the implementation deadline.

2) Arbitration

Arbitration costs encompass hearing attendance, and expert witnesses can impose a significant financial burden on the involved parties. This channel poses a significant challenge for smaller or financially constrained parties, making it difficult to justify arbitration expenses compared to alternative dispute resolution methods.

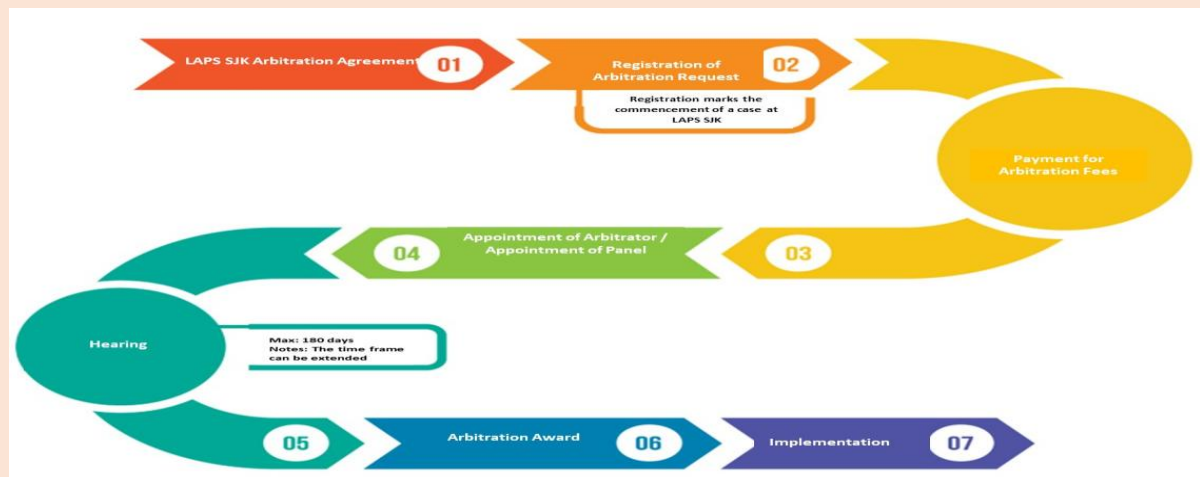


Figure 2: Overview of Arbitration Procedures at LAPS SJK.⁴²

- a. Procedures using the arbitration model as an alternative dispute resolution through LAPS SJK are regulated in LAPS SJK Regulation No.PER-02/LAPS-SJK/I/2021 on Arbitration Rules and Procedures as follows: The pre-arbitration process involves disputing parties agreeing in advance to use arbitration voluntarily. This written agreement, emphasized in the arbitration agreement, designates LAPS SJK arbitration as the chosen forum. If the parties do not specify the LAPS SJK arbitration forum, either party may choose and declare it, subject to confirmation by both parties or one of them. The choice of the LAPS SJK arbitration forum can occur post-dispute. In such cases, a written arbitration agreement, signed by the parties, must confirm their forum choice and meet specific criteria and requirements:
 1. The disputed issue.
 2. Full names and residences of the parties.
 3. Agreement to resolve disputes through LAPS SJK arbitration
 4. Full name and residence of the sole arbitrator/arbitral council
 5. Where the sole arbitrator/arbitral council will make its decision.
 6. Full name of the secretary.
 7. Period for dispute resolution
 8. Statement of the willingness of the arbitrator.
 9. Statement of the willingness of the disputing party to bear all costs of the arbitration
- b. In the pre-application stage, if a dispute arises, the claimant must notify the respondent before submitting the arbitration request registration. The arbitration notification, provided by the claimant to the respondent, explains the agreed-upon arbitration terms and includes the following details:
 1. Names and addresses of the parties.
 2. Designation of the arbitration agreement.
 3. Summary of the basis of the claim and the amount claimed.
 4. Desired mode of settlement.

⁴² Lapssjk, "Proses Arbitrase," lapssjk.com, 2022.

5. If not already stated in the arbitration agreement, the number of arbitrators per the arbitration agreement or a proposal on the number of arbitrators (in odd numbers).
- c. The arbitration application registration stage is the initial stage of conducting the dispute resolution examination process through the arbitrator's arbitration model. This petition for arbitration has been submitted and registered by the petitioner to manage LAPS SJK. This petition for arbitration contains the following matters:
 1. A demand letter containing the following description:
 - a) Full names and residence or domicile of the parties.
 - b) A brief description of the arbitration agreement between the parties and the internal dispute resolution that has been attempted.
 - c) A brief description of the case or posita.
 - d) The content of the claim or petitum.
 2. Appendices consisting of:
 - a) Copy of the arbitration agreement underlying the request for arbitration.
 - b) Deed listing the evidence to be submitted and its description.
 - c) Stamped photocopies of evidence documents.

The arbitration request will be verified, and confirmation of acceptance or rejection will be provided by LAPS SJK management within ten days of the registration date. If the petition for arbitration is rejected, the rejection confirmation letter shall be delivered to the petitioner with the reasons for the rejection. If the arbitration request is accepted, it is recorded in the LAPS SJK case register book, and a confirmation letter of acceptance, along with a copy of the request for arbitration for the respondent, is sent to the parties. In addition, the confirmation letter of receipt also contains the name of the secretary, the calculation of the arbitration fees, and the stages of appointment of the arbitrator. Administratively, to be appointed as an arbitrator in the arbitration process at LAPS SJK, a person must fulfill the following requirements and criteria:

1. Status as an arbitrator of LAPS SJK.
2. Not being sanctioned by the board of LAPS SJK.
3. Not currently subject to an ethics hearing.
4. In good physical and mental health to be able to carry out their duties as an arbitrator effectively.
5. Free from conflict of interest as described in Appendix II of LAPS SJK Regulation No. PER-02/LAPS-SJK/I/2021 on the Arbitration Rules and Procedures.
- d. The parties may agree on the number of arbitrators, preferably in odd numbers. If the arbitration agreement does not specify the number, it defaults to three arbitrators. When multiple claimants or respondents are involved, they count as one party each when proposing an arbitrator. Regarding the appointment of the sole arbitrator, the parties must agree on and appoint the sole arbitrator within ten days of receiving confirmation of the arbitration petition registration. The sole arbitrator is chosen from LAPS SJK's list of arbitrators and must have experience as a panel presiding officer in at least three cases within LAPS SJK and other arbitration institutions. If the parties fail to appoint a sole arbitrator within ten days, LAPS SJK management will allow an additional five days for the appointment. If there is still no appointment after this period, or if the parties submit

the appointment to LAPS SJK management, they waive their right to appointment. In such cases, LAPS SJK management will appoint the sole arbitrator. For the appointment of an arbitrator in an arbitral council, the claimant and respondent are given ten days from receiving confirmation of the arbitration request registration to make their appointments. If the applicant and respondent fail to appoint an arbitrator within ten days, LAPS SJK management will allow an additional five days for the appointment. After the additional five days elapse without an arbitrator appointment by the applicant and respondent, or if they submit the appointment to LAPS SJK management, they waive their right to appoint. LAPS SJK management will appoint the first and second arbitrators in such cases. The appointment of the third arbitrator is contingent on agreement between the first and second arbitrators. If they fail to appoint the third arbitrator within ten days of their appointment, the LAPS SJK board may make the appointment. The appointed third arbitrator serves as the chairman of the arbitral council.

- e. The arbitration hearing stage shall be conducted within one hundred and eighty days from the establishment of the sole arbitrator or the panel of arbitrators until the reading of the arbitral award. The period can be extended if the following conditions are met:
 1. A request is made by one of the parties regarding a specific matter, for example, due to an interlocutory or incidental claim outside the subject matter of the dispute, such as a request for a security seizure as referred to in civil procedure law.
 2. As a result of the examination and the issuance of the provisional decision/other interim decision.
 3. Replacement of an arbitrator.
 4. There is an attempt at reconciliation.
 5. Considered necessary by the sole arbitrator or the panel of arbitrators for the hearing with reasonable cause.
- f. The summons for the first hearing is delivered to the parties by the sole arbitrator or the panel of arbitrators through the secretary. Suppose the claimant fails to appear at the first hearing without a valid reason despite proper summons. In that case, the sole arbitrator or panel of arbitrators may declare the claimant's arbitration petition void. Suppose the respondent or co-respondent fails to appear at the first hearing without valid reasons despite proper summons. In that case, the sole arbitrator or arbitral council may postpone the hearing and summon them again. The next hearing must be held within ten days after the adjournment of the hearing. The examination process will proceed if the respondent or co-respondent remains absent without a valid reason at the next hearing despite proper summons. The respondent's or co-respondent's absence may be considered a waiver of their right to file an answer. In this scenario, the sole arbitrator or arbitral council may grant the claimant's arbitration request if it is legally justified and reasonable.
- g. If the respondent or co-respondent is present, they can provide an answer and submit it at the first hearing or later, as determined by the sole arbitrator or panel of arbitrators. The applicant also has the right to file a replication of the respondent's answer, and the respondent may file a duplicate against the applicant's replication. These documents

must be submitted within the timeframe the sole arbitrator or arbitral council sets. Upon request from either party, the arbitration council or sole arbitrator may extend the submission period for valid reasons, provided that the extension is within the previous period.

- h. The respondent has the right to file a counterclaim or counterclaim, in which case the counterclaim shall be filed simultaneously with the submission of the reply document. Against the respondent's counterclaim, the claimant has the right to respond and include it in the reply document. The existence of this counterclaim is also subject to arbitration fees.
- i. Third parties may join if agreed upon by the parties, and there are reasons of interest related to examining the case's merits and counterclaims.
- j. The sole arbitrator or arbitral council will initially attempt peace efforts and may order the parties to engage in deliberations or mediation before proceeding with the hearing if deemed necessary. If peace efforts during arbitration conclude without an agreement, the hearing will resume. Conversely, if the parties settle, they and the mediator will document the agreement in a peace agreement signed by all parties and the mediator as a witness. At a hearing scheduled by a single arbitrator or arbitral tribunal, the parties may propose a peace agreement with certain conditions. If the parties do not want the peace agreement to be stated in the form of a peace deed, then the agreement must have a clause stating that the case has been completed and revoked. After that, the sole arbitrator or the arbitration panel will declare the examination of the case closed and determine the withdrawal of the case. On the other hand, if the parties want the peace agreement to be stated in the peace deed, then the agreement must contain a clause that explicitly states this. Furthermore, the sole arbitrator or arbitral tribunal will make a peace deed as an official document recording the outcome of the dispute resolution. This procedure provides the legal certainty and formalities necessary for a peace agreement to be recognized and implemented effectively.
- k. The parties (petitioner and respondent) are given equal and fair opportunity to submit evidence deemed necessary to corroborate their arguments. The evidence submitted by the parties includes written evidence (documents and other evidence), witnesses, and experts.
- l. After the evidentiary stage is completed and there is no more evidence or other information, the parties may submit a conclusion document. After that, the sole arbitrator or the arbitral council declares the examination session closed, with the next agenda being the reading of the award.

The arbitrator must issue a decision either by the law or based on principles of justice and fairness (*ex aequo et bono*), with the following guidelines:

- (a) If authorized by the parties to decide based on justice and fairness, laws can be disregarded except for compelling legal requirements, which must be followed;
- (b) If not authorized to base the decision on justice and fairness, the arbitrator must adhere strictly to legal principles;
- (c) Authorization to decide based on justice and fairness is implied when parties request a fair

decision explicitly in their arbitration submissions. The arbitration award contains the following matters:

1. The head of the decision, which reads, "For Justice Based on the Kingdom of the Almighty";
2. The full names and addresses of the parties;
3. The full name and address of the arbitrator;
4. A brief description of the dispute;
5. Establishment of the parties;
6. A statement that the sole arbitrator or the arbitral council has sought peace between the parties;
7. The considerations and conclusions of the sole arbitrator or the arbitral council regarding the entire dispute;
8. The opinion of each arbitrator in the event of a difference of opinion in the arbitral council;
9. The ruling of the award, including the period within which the arbitral award must be implemented and the liability for the costs of the arbitration;
10. Place and date of the judgment;
11. The signature of the sole arbitrator or the arbitral council is required if any arbitrator does not affix his/her signature.
12. The settlement document or arbitration decision must be submitted and officially recorded by the arbitrator or arbitration council to the district court registrar within thirty days of its issuance.

The peace agreement cannot be appealed or challenged, possesses legal authority, and is considered equivalent to a judge's final and legally binding ruling. The ultimate arbitration decision holds enduring legal authority, is obligatory for the parties involved, and is not subject to appeal, cassation, or judicial review. Should the parties fail to comply with the arbitration decision voluntarily, enforcement will be carried out upon the request of one of the disputing parties by the Chief Judge of the District Court. Suppose one of the parties is a member of LAPS SJK and does not implement the settlement deed or arbitration award. In that case, such attitude or action will be subject to sanctions by the provisions of the Articles of Association and OJK regulations.

3) Binding Opinion

The procedural guidelines outlined in LAPS Regulation No: PER-03/LAPS-SJK/I/2021 on Binding Opinion Rules and Procedures are as follows.

- a. The Parties may agree in writing to submit a dispute, whether it occurred or anticipated, to be resolved through a binding opinion of LAPS SJK, and such agreement shall be documented in a binding opinion agreement:
- b. LAPS SJK shall provide a binding opinion based on an application for a binding opinion registered by the parties with the board under these rules and a binding opinion agreement. The request for binding opinion shall contain at least the following matters:
 1. Full names and residence or domicile of the parties;
 2. Brief description of the case;
 3. Opinion requested;

4. Appendices are in the form of relevant supporting evidence.
- c. The management shall verify and confirm the acceptance or rejection of the registration of the binding opinion application within ten days from the date of registration. The management may delegate the authority to verify and confirm, as described in paragraph (2), to secretariat personnel. The request for a binding opinion will be verified, and confirmation regarding its acceptance or rejection by the LAPS SJK management will be provided within ten days from the date of registration. If the binding opinion application is rejected, the applicant will receive a rejection confirmation letter stating the reasons for the rejection. Conversely, upon acceptance of an application for a binding opinion, it is recorded in the LAPS SJK case register book, and a confirmation letter of acceptance is sent to the parties. The confirmation letter also includes the name of the secretary, details on the calculation of binding opinion fees, and outlines the stages of appointing the panel team. To be appointed as a panel team for rendering a binding opinion at LAPS SJK, the following requirements and criteria must be met administratively:
 1. Status as a board member, mediator, or arbitrator of LAPS SJK.
 2. Not being under sanction by the management of LAPS SJK.
 3. Not under investigation by the Ethics Council.

They are in good physical and mental health to effectively carry out their duties as mediators. Free from conflict of interest as outlined in Appendix II of LAPS SJK Regulation No. PER-03/LAPS-SJK/I/2021 concerning the Rules and Procedures for such Binding Opinion.

- a. The panel team, through the secretary, shall deliver the first hearing summons to the parties within seven days of receiving the files of the request for a binding opinion from the management. The first hearing shall take place at least ten days after the date of service of the summons on the parties. If any party fails to appear at the first hearing, the panel team shall postpone the hearing and resummon the parties. The next hearing shall take place seven days after the postponement. If a party continues to fail to appear without a valid reason, the panel team declares the examination of the request for a binding opinion terminated.
- b. The parties shall attend meetings organized by the panel team and provide relevant data and information required to examine the request for a binding opinion. If deemed necessary and relevant, the panel team may, with the consent and at the expense of the parties, invite witnesses, experts, and/or other third parties to appear at the hearing to be heard. The panel team has the authority to determine whether oral or written testimony is efficient for witnesses or experts during the examination. In case of discrepancy, oral testimony shall prevail.
- c. If the hearing is deemed sufficient, the panel team declares the hearing closed and sets a date for the issuance of the binding opinion.
- d. The panel team formulates the binding opinion in a deliberation meeting of the panel team. If consensus cannot be reached, the decision shall be made based on a majority vote approved by more than half of the panel team members. Although there may be differences of opinion in the decision-making as referred to in paragraph (1), it is not necessary to include the dissenting opinion of the member of the examination team who

disagrees with the formulation of the binding opinion. All members of the panel team must sign the binding opinion.

- e. The binding opinion shall only apply to the parties submitting the request for a binding opinion. It shall be final and binding on said parties, to be implemented in good faith. No resistance or rebuttal against the binding opinion can be filed. Any party that fails to implement or acts contrary to the binding opinion given by LAPS SJK shall be in breach of the agreement. Suppose one party is an LAPS SJK member and does not implement the binding opinion. In that case, such attitude or action will be subject to sanctions following the provisions of the Articles of Association and OJK regulations.

4) OFS

In the dispute resolution process, the Ombudsman does not have exclusive authority to make decisions on disputes. The process includes two phases: case management, in which a case manager assesses the dispute, and adjudication, where an ombudsman officer resolves the case. In this regard, OFS's primary role is to resolve disputes using suitable techniques, which may include negotiation, conciliation, mediation, or adjudication.

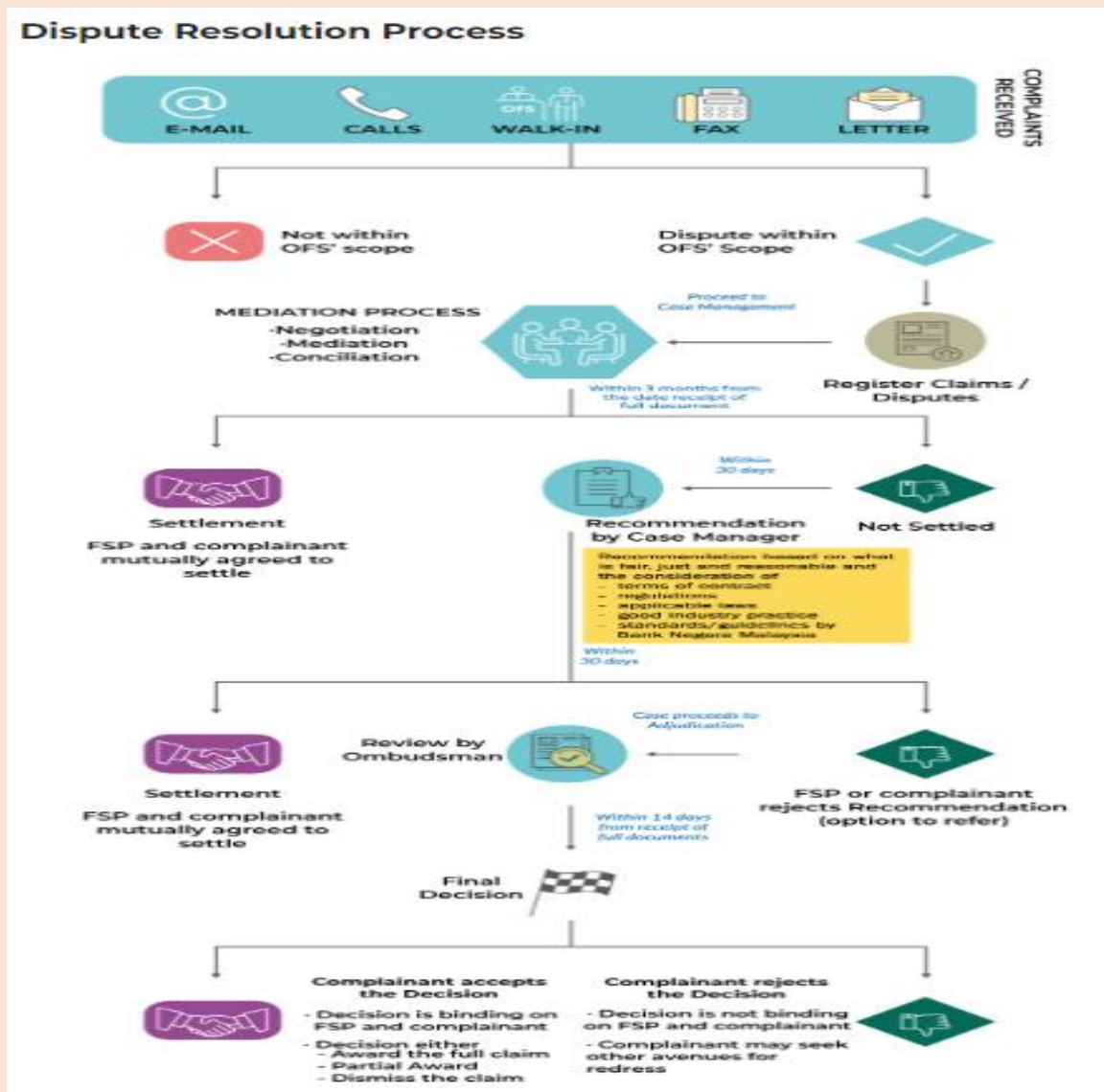


Figure 3: OFS Dispute Resolution Process.⁴³

The OFS proceedings are governed by the OFS Terms of Reference (TOR), based on the Financial Services Act 2013 and its Regulations. The OFS proceedings are as follows:

- a. A financial sector consumer may only apply to the OFS for the resolution of a financial dispute with a financial sector business after a claim has been lodged with the Provider or Financial Sector Actor, an unacceptable decision has been made, or the claim has not been responded to within sixty days of the consumer lodging the claim with the Provider or Financial Sector Actor.
- b. Submission of dispute resolution requests by consumers to OFS can be made in person to OFS or by telephone, facsimile, electronic or non-electronic mail. Other supplementary documents required by OFS must accompany the request for dispute resolution. The request for dispute resolution through OFS is limited to disputes that fall within the scope of OFS's authority, with details as follows:
 - 1) Disputed claims amounting to RM 250,000.00 (two hundred and fifty thousand Malaysian ringgit) originating from the banking sector, including Islamic banking, payment system services or products, and takaful claims.
 - 2) A claim arising from a third party's insurance for a vehicle property damage dispute for RM 10,000.00 (ten thousand Malaysian Ringgits).
 - 3) Claims arising from unauthorized transactions through payment methods, such as internet banking, mobile banking, and unauthorized cheques, in the amount of RM 25,000.00 (twenty-five thousand Malaysian Ringgits).
- c. The settlement request will then be reviewed and facilitated by the Case Manager for resolution and/or recommendation.
- d. The OFS has the authority to award either monetary or non-monetary compensation. Monetary awards should not exceed the designated limit unless all parties involved agree otherwise. Non-monetary awards may include directives from the ombudsman for the member to take specific actions deemed appropriate regarding the disputes, as well as directives for the reimbursement of actual costs incurred by the eligible complainant about the dispute. The eligible complainant's reimbursement for costs related to the dispute is capped at RM 1000 per case. Upon acceptance, the member must adhere to the OFS award.
- e. At this stage, the resolution process carried out by the Case Manager may employ alternative dispute resolution models in the form of negotiation, mediation, and conciliation. During the resolution process, neither a member nor an eligible complainant is allowed to enlist the services of a lawyer or legal firm regarding the dispute before the OFS.⁴⁴ If, in this stage, a settlement agreement is reached, a mutual settlement agreement will be made between the parties. Conversely, if no settlement is

⁴³ AFC, "Dispute Resolution Process," [afc.com](https://www.ofs.org.my/en/dispute_resolution_process), accessed March 22, 2024, https://www.ofs.org.my/en/dispute_resolution_process.

⁴⁴ OFS Term of Reference Number 20 Dispute Resolution Method

reached, the Case Manager will recommend proceeding to the ombudsman for the next stage of the adjudication process.

- f. The ombudsman will conduct a series of examinations or reviews and will then provide a final decision. The resolution process at OFS is finalized by the ombudsman's decision, which is binding and cannot be appealed by either party. The complainant involved can decide to either accept or decline the decision. If accepted within 30 days, both parties are required to adhere to the decision. However, the timeframe may be extended pending the ombudsman's assessment of any reasons for delay. The parties' settlement terms must be documented in writing, and a settlement agreement shall be executed accordingly. A member must comply with the award within 14 days of the eligible complainant's acceptance notification. After resolving the dispute through mutual agreement, the member cannot initiate legal proceedings contradicting the agreement's terms. If the eligible complainant finds the award unacceptable, the parties may seek recourse through alternative channels, such as legal proceedings or arbitration. The award, typically monetary compensation, is determined by the ombudsman as fair and subject to the prescribed limit.

From the existing discussion, the authors can conclude that the difference between the "binding opinion" in the LAPS SJK and the "finality clause" in the OFS adjudication implies two very different approaches to dispute resolution authority.⁴⁵ Binding opinions in LAPS SJK are contractual; they are only binding on the parties when previously agreed upon and do not necessarily have legal enforceability, unless the parties carry them out voluntarily or seek legal approval. This shows the character of ADR in Indonesia, which relies heavily on administrative legitimacy and agreement of the parties, without a strong enforcement mechanism.

In contrast, adjudication decisions by OFS in Malaysia based on the "finality clause" in the Terms of Reference have the power to be directly binding on financial institutions, although they are still optional for consumers. If the consumer accepts the decision within a certain period of time, then the decision is final and must be implemented by the business actor. In this case, the OFS displays a stronger quasi-judicial character than the LAPS SJK, where the dispute resolution institution is given the authority to resemble an arbitration award or a final administrative decision. This suggests that Malaysia is more inclined towards a pro-consumer approach, where ADR institutions have a higher bargaining position in resolving disputes, without relying on other institutions to execute decisions.

Structurally, the difference between an independent OFS and a LAPS SJK that is under the supervision of the OJK also reflects the state's paradigm in regulating the relationship between business actors, consumers, and the state. Indonesia shows a more state-centric approach,⁴⁶ where the state, through the OJK, ensures that every step of dispute resolution

⁴⁵ Anna Maria Tri Anggraini et al., "Consumer Protection in the Retail and Financial Services Sectors against the Practice of Exoneration Clauses," *Journal of Consumer Sciences* 7, no. 2 (August 13, 2022): 83–96, <https://doi.org/10.29244/jcs.7.2.83-96>.

⁴⁶ Andy Rahmad Wijaya, "Analisis Hukum Atas Penerapan Klasifikasi Saham Dengan Hak Suara Multipel Di Pasar Modal Indonesia," *Al-Adl: Jurnal Hukum* 14, no. 2 (July 18, 2022): 367, <https://doi.org/10.31602/al-adl.v14i2.6935>.

remains within the orbit of administrative supervision. This can pose challenges in ensuring the independence of the ADR process, especially when it comes to the interests of large financial institutions that are under the same supervision. Meanwhile, the OFS structure, which is independent of Bank Negara Malaysia but is given authority by law, reflects the spirit of regulatory outsourcing, where trust is given to ADR institutions to act independently but accountably. These structural differences are important because they affect public perception of the impartiality and effectiveness of dispute resolution institutions. In systems that are too close to regulators (such as LAPS SJK, and OJK), there is a risk that consumers do not see ADR as a neutral forum. On the other hand, a system that gives institutions such as OFS the flexibility to resolve disputes and issue final decisions reflects trust in independent institutions in balancing the power relationship between business actors and consumers.

Thus, the distinction between the binding opinion and the final adjudication clause is not only technical, but represents two mainstream currents in modern business law theory: the administrative model that emphasizes systemic stability and oversight (Indonesia), and the adjudicative model that emphasizes consumer rights and dispute resolution efficiency (Malaysia). Therefore, in the context of ASEAN, these differences have major implications for efforts to harmonize and create a fair and effective regional framework for financial services consumers.

4. Conclusions

Disputes eligible for resolution through the LAPS SJK must be based on a mutual agreement or understanding between the parties. This agreement should involve a declaration by the parties opting for one of the alternative dispute resolution methods provided by LAPS SJK, such as mediation, arbitration, or binding opinion. In contrast, the process differs from the dispute resolution mechanism of the OFS, where parties (consumers or businesses in the financial sector) can directly lodge a dispute claim within the OFS's jurisdiction without the need for a prior agreement on the selection of the alternative dispute resolution model. While LAPS SJK offers alternative dispute resolution models such as mediation, arbitration, and binding opinions, the alternative dispute resolution models used and provided by OFS include negotiation, mediation, conciliation, and adjudication. In connection with the executive power of the decision, the LAPS SJK also involves the OJK to supervise the compliance of financial services sector business actors in implementing the LAPS SJK decision. Meanwhile, OFS does not involve other institutions as the OJK does, and if the parties do not accept the OFS decision, they can file other legal remedies to the court or arbitration.

Concerning the arbitration model, LAPS SJK has provided a dispute resolution model for the parties to choose from, particularly for commercial claims. Dispute resolution in the financial services sector that uses an alternative dispute resolution model of the OFS can be resolved in an integrated manner in the same institution. As OFS does not employ arbitration as an alternative dispute resolution model, future studies should examine the needs and benefits of an integrated alternative dispute resolution model in OFS as applicable in the LAPS SJK. While OJK is involved in the LAPS SJK decision-making process, the OFS decision does not engage other institutions. Hence, it is essential to conduct further studies regarding the effectiveness of the enforcement powers of the LAPS SJK decisions related to the factors influencing the involvement of OJK institutions. To support its institutional effectiveness, the

LAPS SJK should be established in several major cities, considering that disputes in the financial sector occur not only in large cities such as Jakarta but also potentially in all major cities spread across the nation. Furthermore, the LAPS SJK should take into account the educational and socio-economic backgrounds of consumers regarding financial services, including both middle-class, well-educated families and lower-class, less-educated families.

5. Acknowledgments

The authors express their gratitude to the Faculty of Law at Universitas Trisakti and the Faculty of Law at UiTM Shah Alam for their collaboration in research and their support through matching grants.

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