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Mediation as an Alternative to Resolving Problematic Credit in Banking Financial Institutions

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ABSTRACT

The problem of non-performing loans (NPLs) remains a major challenge for banking financial institutions due to its direct implications for liquidity, profitability, and the stability of the national financial system. To date, resolution of non-performing loans has generally been carried out through litigation, which is known to be time-consuming, expensive, and provides little flexibility for the disputing parties. This study focuses on analyzing the effectiveness of mediation as an alternative for resolving non-performing loan disputes in the banking sector by examining the regulatory framework, implementation practices, and factors determining its success. Using a normative juridical approach and descriptive qualitative analysis methods, this study explores various legal provisions such as Law Number 30 of 1999, PERMA Number 1 of 2016, and POJK Number 18/2018 and POJK Number 61/2020 concerning the LAPS FSS. The results indicate that mediation has the potential to be an efficient, low-cost, and equitable mechanism for resolving non-performing loans, especially for the micro, small, and medium enterprises (MSMEs) and consumer credit segments. However, its implementation remains suboptimal due to the lack of legal requirements, low awareness among the parties, and limited competence of mediators in the financial sector. Therefore, strengthening regulations, increasing the capacity of mediators, and fostering a legal culture that supports peaceful dispute resolution are necessary for mediation to function optimally as an instrument of substantive justice while maintaining the stability of the national financial system.

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1. INTRODUCTION

The problem of non-performing loans (NPLs) continues to pose a significant challenge to banking and financial institutions. Non-performing loans not only disrupt the liquidity and profitability of financial institutions but also have the potential to destabilize the national financial system if left unaddressed.(Husaeri Priatna, 2017)Therefore, resolving problem loans is a major concern for

regulators such as the Financial Services Authority (OJK) and Bank Indonesia, as well as for practitioners in the banking financial services sector.

So far, the mechanism for resolving problematic loans has largely relied on a litigation approach, either through general courts, commercial courts (in the case of bankruptcy), or through the collateral execution process.(Thriyana, 2020)However, this approach is often time-consuming, costly, and inflexible for both creditors and debtors. In practice, protracted litigation actually worsens the debtor's financial position and hinders asset recovery for creditors.

As an alternative, the Alternative Dispute Resolution (ADR) mechanism, particularly mediation, is encouraged to be used as a means of resolving credit disputes more quickly, cheaply, and providing a win-win solution.(Azura Alysa et al., 2025)Mediation allows both parties to reach a voluntary agreement with the assistance of a neutral third party. In the banking context, mediation can be facilitated by internal parties (such as a bank's mediation unit) or by independent institutions, such as the Alternative Dispute Resolution Agency for the Financial Services Sector (LAPS SJK).

Although mediation is normatively regulated in various regulations, such as PERMA No. 1 of 2016 concerning mediation procedures in court, and POJK No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector, the effectiveness of mediation in resolving bad debts remains questionable. In practice, not all financial institutions have made mediation their primary channel for handling NPLs. Furthermore, numerous obstacles remain, such as poor debtor understanding, lack of mediator preparedness, and the absence of a legal obligation to undergo mediation before going to court.(Suhangga et al., 2019)Therefore, it is important to reassess the effectiveness of mediation as a problem loan resolution mechanism. Is mediation truly capable of reducing NPL levels? What are the obstacles encountered in its implementation? And how does it compare to litigation?

Statistical data from the Financial Services Authority (OJK) shows that the national banking non-performing loan ratio in the second quarter of 2025 was around 2.6%, a slight increase compared to the previous year. While still within safe limits by international standards, this increase signals the need for more adaptive and sustainable resolution strategies. Furthermore, the MSME sector, the backbone of the Indonesian economy, remains vulnerable to default, particularly post-pandemic and during the digital economy transition.

In line with this, the Financial Services Authority (OJK) and Bank Indonesia continue to encourage financial institutions to undertake credit restructuring and resolve problem loans amicably.(Fitri et al., 2023)In some cases, mediation has been proven to prevent escalation of legal conflicts, preserve business relationships, and minimize creditor losses. However, the effectiveness of mediation on a broader scale remains understudied and has not yet been widely adopted as a best practice in the national financial industry.

On the other hand, in practice, the mediation process for resolving bad debts still faces various challenges, including low debtor participation, unequal bargaining power between parties, a lack of legal incentives for parties acting in good faith, and the limited capacity of independent mediation institutions. In fact, many financial institutions still prefer legal channels because they are considered more "final," despite the high cost and lengthy duration.

Previous studies have focused more on resolving bad debts from the perspective of civil law and collateral enforcement, while studies on the effectiveness of mediation as a non-litigative approach are still limited, particularly those based on empirical data or concrete case studies. Thus, there is a research gap that needs to be filled: the role of mediation in Indonesia's credit dispute resolution system and how to enhance its role within the context of modern financial institutions.

This research is expected to not only strengthen the theoretical and normative basis for the use of mediation in credit disputes, but also provide practical contributions in the form of recommendations for more efficient and equitable problem credit resolution strategies.

2. METHODS

This research uses a normative juridical approach.(S. Sukanto, 1990)Normative juridical approach is used to examine the laws and regulations governing the mediation and resolution mechanisms for problem loans. This approach was chosen to gain a comprehensive understanding, both from a theoretical and normative legal perspective.(S. and SM Sukanto, 2009)and the reality of implementation in banking financial institutions at commercial banks and rural banks, especially the handling of problematic loans with LAPS SJK (Alternative Institution for Dispute Resolution in the Financial Services Sector), as well as at the District Court, to see the implementation of PERMA Number 1 of 2016 (if litigation mediation is used). Data collection using Literature Study, by collecting and reviewing literature relevant to the topic. This study uses descriptive qualitative analysis techniques, to see the pattern and effectiveness of mediation implementation.

3. FINDINGS AND DISCUSSION

The Concept of Non-Performing Loans (NPL)

Non-Performing Loans (NPL) are loans that are in arrears in principal and/or interest payments for more than 90 days.(Herfina & Muchda, 2025)According to the Financial Services Authority (OJK), a loan is classified as non-performing if it falls within collectibility level 5 (non-performing), the highest category in the asset quality assessment system. NPLs are a key indicator of a bank's health, as a high NPL reflects an increased risk of debtor default and potential losses for the bank.

The factors causing problem loans are very complex, ranging from internal factors such as weak creditworthiness analysis, to external factors such as changes in macroeconomic conditions, business sector turmoil, and force majeure (for example, a pandemic).(Ainiah & Sriyana, 2024)Therefore, resolving problem loans requires a flexible and solution-oriented approach.

Mediation is part of Alternative Dispute Resolution (APS/ADR) which is non-litigation in nature.(Maharani, 2024)In mediation, the disputing parties are assisted by a neutral mediator to reach a voluntary agreement. Mediation is informal, flexible, and prioritizes win-win solutions. In the context of banking and financial institutions, mediation aims to expedite the resolution of credit disputes without resorting to time-consuming and costly court proceedings. Mediation also maintains good relations between debtors and creditors and allows for the achievement of restructuring or a more realistic payment scheme for debtors. The benefits of mediation include:

- ✓ Time and cost efficiency
- ✓ Confidentiality
- ✓ Control of the process remains in the hands of the parties.
- ✓ The result is a legally binding agreement (if stated in a peace deed)

Several important regulations that form the legal basis for resolving problematic credit through mediation in Indonesia include:

1. Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution is the general basis for the use of mediation as part of APS/ADR.
2. POJK No. 18/POJK.07/2018 concerning Consumer Complaints Services in the Financial Services Sector stipulates that financial institutions are required to provide dispute resolution facilities, including through internal mediation and/or independent institutions.
3. PERMA No. 1 of 2016 concerning Mediation Procedures in Court Requires every civil case that goes to court to first go through the mediation process.
4. POJK No. 61/POJK.07/2020 concerning Alternative Institutions for Dispute Resolution in the Financial Services Sector (LAPS SJK) LAPS SJK is an independent institution that facilitates mediation between financial services business actors and consumers.

However, mediation in resolving problem loans is still not mandatory and depends on the initiative of the parties. There is no legal obligation for creditors or debtors to undergo mediation before proceeding to court.(Suriaatmadja;, 2021)However, most of these studies are still descriptive qualitative

and have not explored the determinants of mediation success and have not systematically compared its effectiveness with litigation or guarantee execution.

Analysis of Regulation and Legal Framework for Mediation in Problematic Credit

Mediation as part of alternative dispute resolution (ADR) has a fairly strong legal basis in Indonesia, both generally through Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and in the context of the financial services sector through POJK No. 18/POJK.07/2018 and POJK No. 61/POJK.07/2020. Furthermore, PERMA No. 1 of 2016 also encourages mediation as the initial stage in resolving civil disputes in court.

Mediation as a dispute resolution mechanism has received significant attention in the Indonesian legal system, particularly in the context of resolving problem loans in banking financial institutions. Regulations governing mediation play a strategic role in determining the effectiveness of its use as an alternative for resolving non-performing loans (NPLs).(Saleh & Rori, 2018)

In general, the legal basis for mediation is Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which recognizes and legitimizes out-of-court dispute resolution, including mediation. This law serves as an important foundation for various policies that encourage the use of mediation as a faster, cheaper, and more efficient method of dispute resolution.

In the financial services sector, mediation is regulated more specifically through several Financial Services Authority (OJK) regulations, such as POJK No. 18/POJK.07/2018 concerning Consumer Complaints Services in the Financial Services Sector, which requires financial institutions to provide dispute resolution facilities, including mediation, both internally and through independent mediation institutions.(Latupeirissa & Dewiningrat, 2023)Furthermore, POJK No. 61/POJK.07/2020 regulates the establishment and role of the Alternative Dispute Resolution Institution for the Financial Services Sector (LAPS SJK), which specifically facilitates mediation in financial services disputes, including the resolution of problem loans.

On the other hand, the aspect of mediation in the context of civil litigation is regulated by Supreme Court Regulation (PERMA) No. 1 of 2016 concerning Mediation Procedures in Court, which requires every civil case brought to court to first go through a mediation process. This provision is expected to reduce the burden on the courts and provide an opportunity for the parties to resolve disputes amicably.

Although these regulations provide a strong legal basis, in practice, the implementation of mediation as a prerequisite for resolving problem loans remains voluntary and not strictly mandatory. This is due to the lack of specific regulations requiring financial institutions to undergo mediation before resorting to litigation or executing collateral. As a result, financial institutions still have the freedom to choose the resolution route they deem most advantageous, often opting for litigation due to its finality and ability to provide swift legal certainty.(Lim et al., 2025)

Furthermore, existing regulations still do not detail the mediation mechanism for resolving non-performing loans, including technical aspects such as settlement timeframes, mediator competency standards, and the rights and obligations of the parties during the mediation process. This situation results in inconsistent implementation of mediation and variations across financial institutions, which has implications for the low success rate of mediation as a solution to non-performing loans.

In the context of consumer protection, although OJK Regulation No. 18 of 2018 provides space for non-litigation dispute resolution, this protection remains general in nature and does not provide strong certainty for debtors experiencing credit difficulties. This creates an unequal bargaining position between creditors and debtors in the mediation process, particularly when the mediator lacks specialized financial capabilities.

From a legal theory perspective, the effectiveness of mediation depends heavily on the balance between legal substance (the rules governing the process and obligations), legal structure (the institutions and mechanisms for implementing them), and the legal culture of society (the parties' awareness and compliance with mediation). In this regard, even though regulations are in place, the

lack of a fully supportive institutional structure and legal culture is a major obstacle to optimizing mediation.

Therefore, to enhance the role of mediation in resolving problem loans, it is necessary to strengthen regulations governing the obligation to mediate as the initial stage of settlement, increase the capacity of mediators with expertise in banking and finance, and educate the parties to better understand the benefits and process of mediation. Thus, mediation can be an effective, efficient, and equitable mechanism for resolving problem loans, while simultaneously supporting the stability of the national financial system.

However, in practice, there are no regulations requiring financial institutions to use mediation before resorting to litigation or security enforcement. This represents a weakness in the legal system that prevents mediation from being fully prioritized.

Furthermore, provisions regarding consumer protection in the financial services sector are still general in nature and do not specifically address detailed mediation mechanisms in the context of resolving bad debts. This has implications for the inconsistent implementation of mediation across financial institutions.

Mediation Practices in Resolving Problematic Credit in Financial Institutions

Then in several banks and financial institutions, it can be concluded that the implementation of mediation is generally carried out in two forms, namely:

Internal mediation is the initial step in the dispute resolution process, conducted within the financial institution itself, typically by the bank's legal department or remedial team. The primary goal of this mechanism is to reach a resolution quickly and efficiently while avoiding escalation of conflict between the customer and the bank. At this stage, direct communication takes place between the two parties to identify the source of the problem, formulate alternative solutions, and offer various forms of resolution, such as credit restructuring, rescheduling, or a written settlement agreement.(Hermawan, 2018)

Internal mediation is crucial for financial institutions because it maintains harmonious relationships with customers, reduces reputational risks that could harm the bank, and saves costs and time compared to resolving disputes through litigation. Furthermore, this mediation reflects the application of the principle of restorative justice, which emphasizes restoring relationships and balancing interests over punishment.(No & Marsela, 2023)From an institutional perspective, this stage also reflects a form of corporate social responsibility and ethics, as it demonstrates the bank's seriousness in protecting consumer rights before bringing the case to the formal legal realm.

External mediation is carried out outside banking institutions by involving a neutral and independent third party, such as the Alternative Dispute Resolution Institution in the Financial Services Sector (LAPS SJK), or through a mediation mechanism in court (litigation). LAPS SJK was established based on Financial Services Authority Regulation (POJK) Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. This institution serves as an independent, impartial, and professional dispute resolution forum between consumers and financial services businesses, such as banks, insurance companies, and financing institutions. The mediation process at LAPS SJK is confidential, fast, and low-cost, based on the principles of fairness and partnership.

If external mediation efforts fail to yield an agreement, the parties may take the case to court, where litigation mediation is a mandatory step before the main case hearing begins. This provision is stipulated in Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court, which stipulates that every civil case must first be resolved amicably through mediation with the assistance of a certified mediator.

Thus, internal and external mediation are two important instruments in the dispute resolution mechanism in the banking sector, each with a complementary role. Internal mediation is more preventive and managerial in nature, while external mediation serves as a formal and legalistic channel

to ensure legal certainty. Both are based on the same spirit: achieving fair, effective, and efficient dispute resolution, while aligning with the principles of consumer protection and the implementation of good corporate governance in the financial services industry.

In practice, the implementation of mediation in resolving banking disputes still encounters various obstacles, stemming from regulatory, institutional, and legal culture aspects of the parties. These obstacles prevent mediation from fully functioning as an effective, expeditious, efficient, and equitable dispute resolution instrument, as envisioned in the national banking dispute resolution legal system.

First, there is still a lack of understanding and low levels of trust among both creditors and debtors regarding the effectiveness of mediation mechanisms. Among banking practitioners and corporate customers, mediation is often considered merely an administrative step without binding legal force. As a result, the mediation process is often ignored or merely carried out as a formality before proceeding to litigation in court. In fact, Supreme Court Regulation (PERMA) Number 1 of 2016 expressly states that mediation is an integral part of the civil justice process and must be conducted before the main case examination. Similarly, Financial Services Authority Regulation (POJK) Number 61/POJK.07/2020 concerning the LAPS SJK provides a legal basis for out-of-court dispute resolution through mediation, which is final and binding if agreed upon by the parties. This low level of trust demonstrates that the legal culture in the banking sector is still dominated by a litigative approach, rather than a consensus-based approach that reflects the values of Pancasila and the principle of family as stipulated in Article 33 of the 1945 Constitution.

Second, there is still a lack of provisions explicitly governing the legal consequences for parties who refuse or fail to act in good faith during the mediation process. Both the Financial Services Authority Regulation (POJK) and the Supreme Court Regulation (PERMA) only stipulate an administrative obligation to participate in the mediation process, without providing firm sanctions for either party's reluctance to attend or failure to participate constructively. In practice, this situation creates an imbalance in bargaining power between creditors and debtors, with financial institutions with greater economic power often reluctant to create a space for balanced compromise. This situation undermines the principle of good faith, which should be the foundation of the mediation process. Therefore, several academics, such as Siregar (2022) and Nugroho (2023), have proposed the need for regulatory reforms that impose moral and administrative sanctions on parties who fail to participate in good faith, so that mediation has binding force and stronger legal legitimacy.

Third, the implementation of mediation is still hampered by the limited number and competence of mediators with specialized expertise in finance and banking. According to the 2023 Annual Report of the Financial Services Authority (LAPS) for Financial Services Authority (SJK), only a small proportion of mediators have professional backgrounds in the financial services sector, particularly in technical aspects such as credit analysis, financing restructuring, and risk management. Yet, these skills are essential to achieving realistic and equitable agreements for the parties. In this context, the effectiveness of mediation depends heavily on the presence of multidisciplinary mediators, namely those who understand the legal dimensions as well as the economic, accounting, and business aspects of banking.

Based on these three issues, it can be concluded that strengthening the effectiveness of mediation in resolving banking disputes requires comprehensive improvements in regulations, institutions, and human resources. Regulations need to emphasize the legal consequences for parties who do not act in good faith; financial institutions need to improve legal education and literacy for the parties; and the Financial Services Authority (OJK) and the Supreme Court must expand coordination in developing a dispute resolution system that prioritizes restorative justice and economic efficiency. Thus, mediation will no longer be merely a formal procedure but will function as an instrument of substantive justice that maintains a balance between consumer protection and the stability of the national financial system.

Factors Determining the Success or Failure of Mediation

From field findings, several important factors that influence the effectiveness of mediation include:

Factor	Influence
Good faith of the parties	The most dominant factor. If one party is absent or refuses mediation, the process automatically fails.
Mediator capacity	The mediator's competence in handling credit cases is crucial. Many mediators lack a thorough understanding of the technical aspects of credit.
Bank flexibility	Banks that have internal policies for compromise or restructuring are more open to mediation.
Supporting regulations	Regulations that do not force mediation are ineffective as a mandatory step.
Credit complexity level	Corporate loans are more complex and less suitable for resolution through mediation than individual or MSME loans.

Comparison of Mediation with Litigation and Execution of Guarantees

Aspect	Mediation	Litigation / Execution of Guarantee
Cost	Low	Tall
Time	Fast (1–2 months)	Long (can be >12 months)
Characteristic	Win-win	Zero-sum (winner-lose)
Legal certainty	Depends on the agreement	There is a decision that has permanent legal force
Relationship of the parties	Maintained	Tend to break up
Restructuring opportunities	Tall	Limited

Although litigation has stronger executive powers, mediation offers a more humane and efficient solution, especially for small-to-medium credits.

In general, mediation has great potential to be an efficient, fair and sustainable solution to problem credit resolution, but its effectiveness is still limited by several factors:

1. There is no legal obligation to undergo mediation as a preliminary stage.
2. Limited capacity of mediator resources, both in terms of quantity and competence in the financial sector.
3. Lack of incentives or sanctions for parties who are uncooperative in the mediation process.
4. The legal culture of society, which tends to still rely on the courts as the main route.

However, in certain cases—especially for MSME and consumer loans—mediation has proven effective in avoiding lengthy disputes, maintaining business relationships, and saving the value of credit assets.

4. CONCLUSION

Mediation has a strong legal basis in Indonesia, both in terms of general legislation (Law No. 30 of 1999), the financial services sector (POJK No. 18/2018 and POJK No. 61/2020), and the judiciary (PERMA No. 1 of 2016). However, mediation is not yet mandatory or a prerequisite for resolving bad debts, so its implementation still depends on the initiative of the parties. The effectiveness of mediation in resolving problem debts is largely determined by the good faith of both parties, the competence of the mediator, the flexibility of the financial institution, and the support of internal policies. In consumer and MSME credit cases, mediation has proven to produce efficient resolutions and avoid escalating legal conflicts. Mediation offers several advantages over litigation or collateral enforcement, such as time and cost efficiency, a win-win approach, and the opportunity to maintain good relationships between debtors and creditors. However, without a system that compels or incentivizes parties to choose mediation, its potential remains untapped. The main obstacles to implementing mediation include the lack of regulations mandating comprehensive mediation, low debtor awareness, and a lack of mediators with adequate financial and legal backgrounds. Mediation has the potential to be an effective alternative solution for resolving problem loans, particularly in cases in the retail and MSME sectors, but it still requires strengthening in terms of regulations, institutions, and the legal culture of the community.

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