

## The establishment of LAPS SJK in the trajectory of history viewed from the politics of Indonesian law

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### Abstract

**Introduction to the Problem:** The history of the formation of the LAPS SJK is based on the importance of consumer protection in the financial services sector. According to the law concerning the role of the Financial Service Authority, the institution is given the authority to facilitate the settlement of complaints from consumers who are harmed by the finance actors. The OJK then issued regulation (POJK) Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector (LAPS SJK) which was later replaced by regulation Number 61/POJK.07/2020.

**Purpose/Objective Study:** This research examines, how is the history of the LAPS SJK formation and how is the legal politics of the formation.

**Design/methodology/Approach:** This research is normative, using a historical approach. It applies a descriptive method with the secondary data.

**Findings:** The interesting finding is that the establishment of LAPS SJK is to protect consumers in the event of a dispute with the financial actors, so the legal politics regulating the LAPS SJK should be an integrated part of the political scheme of consumer protection law. Institutionally, the legal politics of establishing LAPS SJK is motivated by 3 (three) reasons. The initial reason is the establishment of OJK which has a determinant role and function to supervise integrated financial services business activities for the capital market, banking, and non-banking sectors. Another reason is the reality of the advanced development of technology in the global financial services sector, and the last reason is the need of the parties involved in the financial services sector industry; both consumers and finance actors who need an ideal non-court dispute resolution institution.

**Paper Type:** Research Article

**Keywords:** LAPS SJK; Trajectory of History; Politics of Indonesian Law



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## Introduction

One of the clauses mostly stated in an agreement signed by the parties is a clause regarding the choice of place and law of dispute resolution to ensure legal certainty. The factor that causes disputes to arise between the parties is a violation of the agreement that has been outlined, either in part or in full. Disputes arising between the parties must be resolved immediately to avoid protracted dispute conflicts and also to provide guarantees of justice and legal certainty to the parties ([Bustamin et al., 2022](#)).

In general, dispute resolution clauses contained in an agreement contain mechanisms or procedures for dispute resolution and the choice of dispute resolution forum agreed by the parties. The parties are given the freedom to choose and decide the dispute resolution forum ([Athasya & Muryanto, 2019](#)). Normatively, there are only two options for dispute resolution forums, those are dispute resolution forums through public courts or one through alternative non-court dispute resolution institutions ([Hanifah, 2016](#)). Both options must be affirmed and agreed upon by the parties in the agreement. This aims to emphasize the absolute competence of the body or institution that will examine and adjudicate the dispute ([Jamil et al., 2023](#)).

It is well known that dispute resolution in a court should follow several stages, starting from the case settlement at the district court level to the high court or the court of appeal, and finally to the supreme court which has the authority to examine disputes at the cassation and judicial review levels. Conversely, non-court dispute resolution, or what is often known as Alternative Dispute Resolution (ADR) can be done through the process of arbitration, mediation, consultation, negotiation, conciliation, or expert judgment.

The concept of non-court or alternative dispute resolution was first introduced in Indonesia in 1977 with the establishment of the Indonesian National Arbitration Board (BANI) on 30 November 1977. Furthermore, to strengthen the recognition of the regulation about alternative dispute resolution models, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution was issued. After the regulation, several other arbitration bodies were formed, becoming specialized in examining and resolving special cases in certain fields or sectors such as the National Sharia Arbitration Board (BASYARNAS), the Consumer Dispute Resolution Board (BPSK), the Indonesian Capital Market Arbitration Board (BAPMI), the Indonesian Construction Arbitration and Alternative Dispute Resolution Board (BADAPSKI), and

others. These arbitration bodies were formed to respond to the shortcomings of the previously existing formal judicial institutions ([Rahmawati & Mantili, 2016](#)).

The Consumer Dispute Settlement Body (BPSK) was established based on the mandate stipulated in Law Number 8, Year 1999 on consumer protection. BPSK, normatively, has the authority to resolve consumer disputes out of the public court, which relate to goods and/or services. In contrast, the LAPS SJK was established by the Financial Services Authority (OJK) and has specific and limited authority to examine and resolve disputes in the financial services sector ([Rambe et al., 2022](#)).

LAPS SJK was first established under the Financial Services Authority Regulation No. 1/POJK.07/2014 which was applied on 23 January 2014. The establishment of LAPS SJK is based on the consideration of protecting consumers in the financial service sector, especially those who submit claims or complaints to the finance actors. Meanwhile, for the fintech sector, there is a dualism of alternative non-court dispute resolution institutions that have the authority to examine and provide decisions on disputes between the consumers and finance actors, namely LAPS SJK and the Consumer Dispute Resolution Agency (BPSK) ([Nurhayati et al., 2022](#)).

In 2020, POJK Number 1/POJK.07/2014 of 2014 concerning LAPS SJK was revoked and replaced by Financial Services Authority Regulation Number 61/POJK.07/2020. This revocation is due to the reason that improvements need to be made to realize a more effective and efficient alternative financial services sector dispute resolution institution, as well as to respond to the advanced development of technology, and the more complex financial services products and services which have crossed the financial services sector.

It turned out that an Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK) was also formed, aiming to resolve disputes arising specifically in the financial services sector between finance actors and the consumers outside the court (non-litigation). The criteria for disputes that can be submitted to LAPS SJK based on POJK 61/POJK.07/2020 include the following.

1. The complaint has been resolved by PUJK, but rejected by the consumer or the consumer has not received a complaint response as stipulated in OJK regulations regarding consumer complaint services in the financial services sector;
2. The dispute submitted is not an ongoing case, or has been decided by a judicial institution, arbitration, or other alternative dispute resolution institution; and
3. The dispute is civil.

In addition to the three types of disputes above, LAPS SJK can also resolve other disputes that are approved by OJK. In 2023, with the enactment of Law Number 4/2023 concerning the development and strengthening of the financial sector, there are particular implications for changes in nomenclature or terms which initially Alternative Institution for Dispute Resolution in the Financial Service Sectors (LAPS



SJK) became the Alternative institution for Dispute Resolution in Financial Sector (LAPS SK).

The definition of finance actors is "business actors of the financial sector, hereinafter abbreviated as PUSK, which includes financial services institutions, financial market infrastructure business actors, payment system business actors, supporting institutions in the financial sector, and other financial sector business actors both carrying out business activities conventionally and based on Sharia Principles by the provisions of laws and regulations in the financial sector. Meanwhile, the definition of consumer is "every person who owns and/or utilizes products and/or services provided by finance actors. Basically, consumers have the right to be heard, get advocacy, be fostered, be treated fairly, and be compensated if there is an adverse discrepancy (Desiani & Kerti, 2023).

Research conducted by Nurhayati, et., al 2022 on "Measuring Opportunities and Challenges in Dispute Resolution of Fintech Sharia Business Through LAPS" to discuss alternatives to specific dispute resolution in the Fintech Sharia business resolved through LAPS SJK. While Simanjuntak, J. L., & Simanjuntak, K. 2023 discuss research on "Alternative Insurance Claim Dispute Resolution in BMAI AND LAPS SJK." which emphasizes dispute resolution for claims in the insurance sector through BMAI and LAPS SJK. This research is different from the two studies mentioned earlier because this study discusses the history and legal politics of the formation of LAPS SJK. The history of the establishment of LAPS SJK, which was initiated by the Financial Service Authority (OJK) regulations Number 1/POJK.07/2014, Number 61/POJK.07/2020, and the amendment with Law Number 4/2023 concerning the development and strengthening of the financial sector, certainly cannot be separated from the legal politics of the formation of these regulations.

From the perspective of the legal system, the establishment of those three regulations must be seen as a political formation of legal substances for the political formation of legal structure, especially the political formation of alternative dispute resolution bodies or institutions in the financial sector. The existence of a mutually influencing relationship between the variables of the formation of legal substances and the variables of the formation of legal institutions (legal structure) is certainly an inseparable part of the history and legal politics of the formation of the LAPS SJK in Indonesia. Based on this, the problems formulated for this paper include: how is the history of the formation of the LAPS SJK in Indonesia? and how is the legal politics of the formation of the LAPS SJK?

### **Methodology**

This research is normative-typed research with an emphasis on the legal history approach. This research focuses on the history of positive law formation in the legal system that regulates the issue of the formation and regulation of alternative institutions for dispute resolution in the financial sector in the Indonesian legal

system, especially from the perspective of legal politics (Nasution, 2008). The legal history approach is very helpful for researchers to understand the philosophy of legal rules or regulations over time. In addition, through the legal history approach, researchers can also understand the development of the philosophy underlying the law (Marzuki, 2013).

Legal history research focuses on the formation and development of certain institutions and the factors that influence the formation and development of the institutions (Soekanto, 2006), in this research case is the formation and development of the LAPS SJK. This research applies a descriptive method of analysis, using secondary data as the source. The sources of legal material used in this writing are primary legal sources that have binding legal force, namely laws, and secondary legal sources or materials that are derived from literature (Yasa et al., 2022), such as journal articles and books. The research was conducted qualitatively, in which the data analysis does not include numbers, but provides a description and prioritizes the quality of the data (Salim, 2013). Furthermore, in generating the conclusion, this paper uses the deductive method.

## Results and Discussion

### *History of the Establishment of LAPS in Indonesia*

The regulation and supervision of activities carried out in the financial service sectors including those working for the management of retirement funds, financing, capital markets, insurance, and others as of 31 December 2012 have been transferred de facto and de jure to the Financial Services Authority (OJK). Likewise, the regulation and supervision of financial services activities in the banking sector have also been transferred to OJK since 31 December 2013 (Rejeki, 2022). By operational definition, the Financial Services Authority is an "independent institution which has the functions, duties, and powers of regulation, supervision, examination, and investigation as referred to in this Law.

Article 29(c) of the Financial Services Authority (OJK) Law empowers the OJK to play a pivotal role in addressing grievances lodged by consumers who have suffered losses due to the actions of financial service institutions. This facilitation by the OJK must align with the comprehensive legal framework governing financial services, ensuring that the resolution process adheres to the principles and regulations currently in force within the financial sector. This provision underscores the OJK's responsibility to uphold consumer protection standards and maintain the integrity of financial transactions and institutions.

Furthermore, Article 31 of the OJK Law extends this mandate by establishing that the specific guidelines and mechanisms for consumer and community protection will be further delineated through detailed regulations issued by the OJK, known as OJK Regulations (POJK). These regulations are intended to provide clarity and operational specifics on how consumer protection measures are to be implemented, thereby

ensuring that both consumers and the broader community are safeguarded against malpractices within the financial services industry. The POJK serves as a critical instrument for translating the broad legislative intent into actionable and enforceable rules, thereby enhancing the OJK's ability to protect the interests of consumers and uphold public confidence in the financial system.

In terms of institutional legal politics, the establishment of the OJK as an independent institution in the financial services sector is an important momentum because the institution has 5 (five) institutional functions regulated and given by the Law, including:

1. The regulator function; OJK has the authority to form regulations in the financial services sector.
2. Supervisor function; OJK has the authority to supervise finance actors.
3. Examiner function; OJK has the authority to conduct examinations of business activities in the financial sector carried out by the finance actors.
4. Investigator function; OJK has the authority to conduct investigations into allegations of criminal offenses occurring in the financial services sector.
5. Facilitator function; OJK has the authority to facilitate the settlement of consumer complaints that are harmed by finance actors.

In compliance with the mandates of Article 31 of the Financial Services Authority (Otoritas Jasa Keuangan, or OJK) Law, the OJK promulgated Regulation Number 1/POJK.07/2013. This regulation specifically addresses consumer protection within the financial services sector, aiming to safeguard the interests of consumers in their interactions with various financial institutions. These institutions encompass a broad spectrum, including banks, insurance companies, reinsurance entities, financing firms, mortgage companies, securities enterprises, investment advisors, custodian banks, pension fund managers, and guarantee companies. The regulation sets forth comprehensive guidelines to ensure that these financial entities uphold high standards of transparency, fairness, and accountability in their dealings with consumers.

On 23 January 2014, POJK Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector (LAPS SJK) was issued. The regulations underlying the establishment of POJK Number 1/POJK.07/2014 consist of Law Number 21 of 2011 concerning Financial Service Authority (OJK), Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, and POJK Number 1/POJK.07/2013 concerning consumer protection in the financial services sector so that it can be said that the basic idea of establishing LAPS SJK is one way to provide consumer protection in the financial services sector.



**Table 1.** Previously Existing LAPS SJK in Indonesia

Formation Year	Nomenclature of LAPS SJK	Before POJK Regulation No 1/POJK.07/2014	After POJK Regulation No 1/POJK.07/2014
2002	The Indonesian Capital Market Arbitration Board (BAPMI)	√	
2003	National Sharia Arbitration Board of the Indonesian Ulema Council (BASYARNAS-MUI)	√	
2006	Indonesian Insurance Mediation and Arbitration Agency (BMAI)	√	
2011	The Pension Fund Mediation Board (BMDP)	√	
2015	Indonesian Alternative Banking Dispute Resolution Institution (LAPSPI)		√
2015	Indonesian Financing, Pawnbroking and Venture Mediation Agency (BMPPVI)		√
2015	Indonesian Guarantee Company Arbitration and Mediation Board (BAMPPPI)		√

Source: Authors

POJK Number 1/POJK.07/2014 regulates dispute resolution in the financial services sector through mediation, arbitration, and adjudication. It is different from the previous regulation, in which the supervision of the banking sector was the authority of Bank Indonesia which was regulated in Bank Indonesia Regulation Number 8/5/PBI/2006 dated 30 January 2006 concerning banking mediation (Nugroho, 2015). However, the provisions stipulated in POJK Number 1/POJK.07/2014 do not have significant differences from the provisions stipulated in Law Number 30 Year 1999 on arbitration and alternative dispute resolution (Rama, 2022).

Furthermore, POJK Number 18/POJK.07/2018 concerning consumer complaint services in the financial services sector regulates that non-court dispute resolution can be carried out through alternative dispute resolution institutions that have been determined by OJK and the clause on dispute resolution selection either through the court or out of court must be included in the agreement and/or financial transaction between the finance actor and the consumer.

As part of the development, POJK Number 61/POJK.07/2020 concerning alternative institutions for dispute resolution in the financial services sector (LAPS SJK) was



issued on 16 December 2020 ([Simanjuntak, 2023](#)). POJK Number 61/POJK.07/2020 revokes the enactment of POJK Number 1/POJK.07/2014. Meanwhile, LAPS SJK itself started its operation on 1 January 2021. The main regulation in this POJK explains that dispute resolution in the financial services sector for all finance actors carried out by means outside the court will be carried out by an alternative dispute resolution institution called LAPS SJK.

The establishment of POJK Number 61 is based on Law Number 21 of 2011 concerning OJK and POJK Number 1/POJK.07/2013 concerning consumer protection in the financial services sector. To look attentively at the weighing consideration section of this POJK, it can be seen that this POJK does not use Law Number 30 of 1999 concerning arbitration and alternative dispute resolution as the relevant regulatory norm which is the basic guideline in the establishment of arbitration and other alternative dispute resolution institutions. However, the alternative dispute resolution methods or mechanisms used by LAPS based on POJK Number 61/POJK.07/2020 are mediation and arbitration. This, according to the author, is a note that can be criticized; the neglect of a basic norm regulated in a law which is hierarchically higher in position than the POJK.

The mediation method as an alternative dispute resolution has been highly used in Indonesia in recent times, especially in the business sector because of its fast resolution and low cost. Moreover, dispute resolution using mediation has been known in Indonesia as it is quite similar to the customary system which uses deliberation and consensus through traditional forums in each region in Indonesia ([Fadillah & Putri, 2021](#)). The advantages of mediation are as follows ([Sugianto & Marpaung, 2022](#)).

1. The parties to the dispute can maintain good relations.
2. Cheaper and faster.
3. Confidentiality is guaranteed
4. Results that satisfy both parties
5. A more comprehensive agreement.
6. The resulting agreement can be implemented

Arbitration is an alternative option for parties to resolve disputes in consideration of its fast process and relatively low-cost ([Jamil et al., 2023](#)). In general, dispute resolution conducted through arbitration by arbitrators covers commercial disputes, which can be resolved civilly through the jurisdiction of the general court, that is in the local district court. The parties deliberately set aside the settlement through the forum in the district court because the arbitral award is final and binding for the parties who submit it. In other words, in an arbitration award, there is no possibility of filing a legal remedy by one of the parties who lost or did not accept the arbitration award made by the arbitral tribunal ([Baiquni, 2022](#)). This is a benefit provided by the arbitral institution as well as the special characteristic of the arbitral institution.



Structurally, the arbitration process is preceded by the submission of a request for arbitration by the parties who have stated the choice of dispute resolution forum in the initial agreement. The submission of the request for arbitration is of course accompanied by a request for the appointment of arbitrators to be selected by the Claimant and also by the Respondent to handle the dispute in the arbitration (Jinaratana et al., 2023). The rest of the examination process in the arbitration institution is relatively the same as the district court, such as the stages of answering in the form of answer documents, replication, duplicates, and conclusions as well as the examination of written evidence and also witness testimony including the expert testimony. Finally, the panel of arbitrators will conduct a deliberation meeting to provide a final decision.

In the transitional provisions of POJK Number 61/POJK.07/2020, it is stipulated that all PUJKs that have become members of the LAPS SJK based on POJK Number 1/POJK.07/2014 as of 1 January 2021 automatically become members of the LAPS SJK by the provisions of Article 6 of POJK Number 61/POJK.07/2020 and all agreements that have been made between PUJKs and consumers regarding the selection of dispute resolution forums through alternative dispute resolution institutions as stipulated in POJK Number 1/POJK.07/2014 are transferred to the Financial Services LAPS stipulated in POJK Number 61/POJK.07/2020.

Likewise, LAPS SJK that have been registered under POJK Number 1/POJK.07/2014 could still receive complaints from consumers until 31 December 2020 and were resolved by applicable laws and regulations. Looking back at the history of the establishment of alternative dispute resolution institutions in the period before and after the OJK Law and POJK Number 1/POJK.07/2014 as described above, it is an inseparable part of the institutional legal politics which, in the author's opinion, is influenced by the following factors:

1. There is a real need from business actors, especially in the financial sector and also people in general as consumers for alternative dispute resolution institutions that provide benefits in the form of an examination process having a relatively low cost, and quick process, and provide final and binding decision without any further legal remedies.
2. legal substances are strengthening the policy, those are the establishment of Law Number 30, 1999 on arbitration and alternative dispute resolution, Law on OJK, and POJK Number 1/POJK.07/2014. The strengthening of this legal substance then becomes the fundamental foundation for the formation and authority of arbitration and alternative dispute resolution institutions to examine and provide decisions in a dispute.
3. The necessity of specialization of the expertise that becomes the scope of dispute resolution by arbitration and alternative dispute resolution institutions adjusted to the type of dispute so that business actors and consumers can choose according to their wishes.



The politics of institutional law in the formation of the LAPS SJK is also inseparable from the political-legal issues of the formation of regulations which form the basis for the legality of the formation of the LAPS SJK as an effective and efficient institution which is expected to provide fair decisions for all parties in the financial services sector, The formation of the LAPS SJK from a historical perspective certainly aims to protect consumers, especially in the financial services sector in the event of a dispute with PUJK. Based on this explanation, the legal politics of regulating the LAPS SJK cannot be separated and is an integrated part of the political scheme of consumer protection law.

### ***Legal Politics of the Establishment of LAPS SJK***

The discussion of legal politics cannot be separated from discussions about politics and law. The law can be understood as a goal of politics with the intention that the basic ideas contained in law such as the idea of freedom, justice, and certainty can be placed in positive law. The implementation of some or all of these legal ideas is the goal of the political process, so in this case, law is a tool of politics. Meanwhile, politics uses positive law to achieve or realize legal ideas. Politics and law are the basic guidelines of the concept of legal politics with the stipulation that the implementation of legal political development cannot be separated from the implementation of political development as a whole. The basic principles used as provisions for political development also apply to the implementation of legal politics which is realized through statutory regulations both in the process of formation and implementation (Isharyanto, 2016).

Political law can be defined as a legal policy or official line (policy) regarding law that will be enforced either by making new laws or by replacing the old ones to achieve state goals (Mahfud, 2007). Therefore, in political law, the law contains objectives that answer the question of why the law was created or formed by the state, the purpose for which the law was created by the nation, and the direction in which the formation of the law aims (Fitriana, 2018).

Wahjono defined legal politics as the policies of state administrators that are fundamental in determining the direction, form, and substance of the laws that will be formed and the things that will be used as criteria for regulating something. Based on this, legal politics is related to laws that will apply in the future or futuristic (*ius constituent*) (Padmo, 1986). Meanwhile, Radhie defined legal politics as a statement of will by state authorities regarding the laws applied in their territory or jurisdiction, and the direction of legal development that will be developed (Fitriana, 2018). Rahardjo perceived legal politics as an activity of choosing and a method used to realize certain social goals and legal objectives in society. William Zevenbergen in his opinion stated that legal politics tries to answer the question of which legal regulations should be made law.



The legislation itself is a form of legal policy (Zevenbergen, 2011). Therefore, there are several fundamental questions in the study of legal politics, namely: (1). What goals are to be achieved or realized by the existing legal system; (2). What means or methods can be used properly and appropriately to achieve and realize these goals; (3). When is the right time for the law to be changed and through what method the law should be changed; and (4). Can a formulation be carried out with a standard and established pattern that can help decide on the process of selecting goals and ways to achieve these goals well? According to Mahfud M.D, he explained that three things constitute the study of legal politics, namely: first, the study of state policy which is the official line regarding laws that will be enforced or not enforced to achieve state goals; second, a study of the political, economic, social, and cultural background which is an influencing factor in the formation of legal products, and third, a study of law enforcement in reality (Mahfud, 2007).

Based on its nature, legal politics is divided into two, namely legal politics which is permanent, and another which is periodic or temporary (Pratama et al., 2020). Permanent legal politics include the implementation of the principles of judicial review, people's economics, and the balance between legal certainty, justice, and expediency. Permanent legal politics also includes the policy of reforming colonial inherited laws with national law, control of natural resources by the state, and independence of power. Meanwhile, temporary legal politics is legal politics formulated by the development of the situation and conditions faced in each particular period, both those that will be enacted and those that will be revoked. Examples of temporary legal politics are legal politics which carries out codification and unification in certain areas of law from 1973 to 1978, legal politics to form legal institutions such as the state administrative courts in the period of 1983 to 1988, and politics in the form of policies on national legislative program (PROLEGNAS) in the period of 2004 to 2009 (Huda, 2023).

Meanwhile, the terminology of national legal politics is defined as the basic policy of state administrators (the Republic of Indonesia) in the field of law which will be, is, and has been in force. It originated from the values that apply in society to achieve the aspired goals of the state (Republic of Indonesia) (Syaukani, 2011). In Indonesia, legal instruments are often used as tools of political power, not only as a process of national development but also as a basic strength of the political structure itself. Thus, it can be concluded that certain legal products have certain political objectives, one legal product is one or several specific political steps. Political processes and configurations cannot be separated because political configurations are part of the process of forming a regulation or legal product. Both are elements that are always present in the tug-of-war between politicians' interests (Sebyar, 2022).

Having an educational background in political law, Mahfud MD initially spoke about the concept of separation between political studies and legal studies, although finally



the two concepts are merged. According to Emi, she assumed that there are three things underlying the statement:

1. Determinant law determines politics, which has the interpretation that law should take control over political activity
2. Politics is a determinant of law, meaning that both in the context of legal products or in terms of enforcement, the law is greatly influenced by politics
3. and the law has an interdependent relationship. Like the adage, Politics will be anarchic with the absence of law because it gives rise to arbitrariness, and law without the existence of politics will be paralyzed ([Karsayuda, 2015](#)).

Good legal politics will be used as a solution to resolve problems that arise in a country. Good legal politics must rely on the following things:

1. Good legal politics must be able to realize the ideals of a just and prosperous Indonesia through Pancasila;
2. Legal politics must achieve the national goals as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution;
3. Legal politics must be based on the values contained in Pancasila as the ideology; And
4. Legal politics must participate in building the legal system of Pancasila which is a combination of the good values of justice, interests, and social. Those values are then crystallized into a balanced relationship.”([Islamiyati & Hendrawati, 2019](#))

The influence of politics in the formation of laws or regulations is visible. The influence of politics in every stage of the regulation formation is inevitable, which ultimately has an impact on the substance of the regulations formed by the government ([Mahfuz, 2020](#)). Therefore, with this large political influence, it is important to create transparency in legal politics itself ([Bugaric, 2004](#)).

Transparency in drafting regulations is very necessary as it concerns all Indonesian citizens who have the right to obtain information as stipulated in Article 28 F of the 1945 Constitution. Transparency in drafting regulations should cover the whole process, from the initial to the final stage, so that all citizens have the opportunity to give opinions and participate in the formation of the regulations ([Idrus, 2022](#)). Community participation in the formation of regulation is a representation that the country upholds democratic values ([Michels & De Graaf, 2010](#)). Therefore, legal politics that produce good legal products must be balanced with good law enforcement as well because legal politics cannot stand alone. Legal products must have the function of resolving existing disputes as well as becoming a social engineering tool.

If the law cannot resolve existing disputes, and the problems continue to fester, it will hinder the realization of state goals ([Maysarah, 2019](#)). A fundamental overhaul of the legal substance requires complex political stages. The formation of regulations in the economic sector is essentially a crystallization of the battle between several interests dominated by political power and business interests. Indicators of both the political



system and the character of legal products that are interconnected can be described in the following table (Mahfud, 2007):

**Table 2.** Political System Indicators

No.	Democratic Political Configuration	Authoritarian Political Configuration
1	Political parties and parliament are strong, determining the direction or policy of the country	Political parties and Parliament are weak, under executive control
2	The Executive Agency (Government) is neutral	The Executive Agency (Government) is interventionist
3	The press has freedom, no censorship or restrictions	The press is confined, threatened with censorship and banning

Source: Mahfud (2007)

**Table 3.** Product Characteristics of Legal Products

No.	Characteristics of Responsive Legal Products	Characteristics of Orthodox Legal Products
1	The creation is participatory	Its creation is centralized-dominative
2	The content is aspirational	The content is positivist-instrumentalists
3	The detailed contents are limited	Details of the contents are open-interpretive

Source: Mahfud (2007)

According to its factors, legal politics is divided into three categories as follows (Mahfuz, 2020):

1. Legal politics caused by juridical factors. Juridical validity refers to the binding power of legal norms based on technical juridical considerations. From a juridical point of view, a legal norm is considered valid if (i) it is established as a legal norm based on higher or superior legal norms, as stated by Hans Kelsen in his theory "Stufenbau Theorie des Recht", (ii) it is binding or valid because it shows the necessary relationship between a condition and its consequences, as seen in the perspective of J.H.A. Logemann (Yusuf, 2022), (iii) it is established as a legal norm by applicable legal formation procedures, as recommended by W. Zevenbergen, and (iv) it is stipulated as a legal norm by the authorized institution. If these three criteria are met, the legal norm in question can be said to be valid from a juridical perspective.
2. Legal politics is caused by political factors. A legal norm is considered politically valid if its enforcement is supported by real political power factors (*riële machtsfactoren*) (Heryansyah, 2016). Even though the norm is supported by the grassroots level of society, in line with the state's philosophical ideals, and has a very strong juridical basis, without political support in parliament, the norm will



not gain political support to be enacted as law. In other words, political validity is related to the theory of power, which in turn legitimizes the validity of a legal norm solely from the perspective of power.

3. Legal politics are caused by sociological factors. The sociological perspective on legal validity tends to prioritize an empirical approach, emphasizing certain criteria such as (i) recognition theory, (ii) acceptance theory, or (iii) factual legality criteria. The first criterion (recognition theory) assesses the extent to which legal subjects recognize the existence and binding force of the legal norm in concern, which indicates that if legal subjects do not feel bound, then sociologically the legal norm does not apply to them. The second criterion (reception theory) is related to public awareness in accepting the binding force of the legal norms. Christian Snouck Hurgronje uses this as a basis for arguing that in the Dutch East Indies colonial period (Yusuf, 2021), Customary law applied over Islamic law, stating that if Islamic law appears to apply sociologically, this is because the indigenous communities have incorporated it into their legal traditions. The third criterion emphasizes factual reality (legal factuality), which assesses how effective legal norms apply in the actual life of society.

Based on the explanation of legal political concepts that are related to the historical trajectory (Greve & Rao, 2014) of the formation of regulations that became the basis for the policy for the formation of the LAPS SJK, the authors note that legal politics of the formation of the LAPS SJK were influenced and motivated by the following reasons:

1. There is a formation of a new institution (Ghio & Verona, 2022), namely the Financial Services Authority (OJK), which has a decisive role and function to supervise integrated financial services business activities for the capital markets sector, banking sector, and non-banking sector.
2. The reality of the advanced development of technology in the global financial services sector which requires a supporting infrastructure both in the form of institutions and in the form of regulations which are part of the politics of regulation formation in general and the formation of LAPS SJK in particular.
3. There is a need for an ideal non-court dispute resolution institution for both parties involved in the financial services sector (the consumers and finance actors). The institution is expected to provide alternative dispute resolution options that are fast, efficient, and low-cost, as well as provide final and binding decisions for the parties to the dispute.

If we look back, the establishment and establishment of LAPS SJK was initiated by 3 (three) Self-Regulatory Organizations and 19 (nineteen) associations in the financial services sector which then in carrying out its main activities as an alternative dispute resolution institution, LAPS SJK, has also obtained approval from OJK on December 29, 2020. In addition, OJK also has the authority to supervise the activities of LAPS SJK. It should be noted that the existence of LAPS SJK is a new institution that is separate and different from the 6 (six) alternative financial service dispute resolution institutions that have been determined and contained in the previous OJK list, namely

BAPMI, BMAI, BMDP, LAPSPI, BMPPVI, and BAMPPPI. There is a novelty that is a differentiating factor between LAPS SJK and 6 (six) alternative financial service dispute resolution institutions that have been determined and contained in the previous OJK list, namely the expansion of the scope of dispute resolution arising from the financial technology sector or abbreviated as Fintech.

Observing this, the author sees a demand for sociological needs that arise as a consequence of the development of the world of the financial services sector so it is necessary to form an alternative dispute resolution institution in the financial sector that has an element of novelty, namely having the ability to resolve financial sector disputes born from a financial system based on electronic systems and information technology. This novelty factor is an innovation of LAPS SJK but is not owned by 6 (six) alternative financial services dispute resolution institutions that have been determined and contained in the previous OJK list. The approval and supervision given by OJK as the authority that has duties, functions, and authorities, especially to regulate and supervise the LAPS SJK, must also be seen in the context of mutualistic institutional strengthening relationships. This means that although LAPS SJK is not an institution or body that is an official part of the OJK institution, LAPS SJK also has a contribution to resolving disputes arising between financial sector consumers and financial sector business actors so that it can assist one of OJK's main tasks in the field of consumer and community protection.

The existence of the context of the relationship between mutualistic institutional strengthening between LAPS SJK and OJK can certainly also be seen from the perspective of institutional legal politics. Politically, institutional law, the establishment of LAPS SJK as an alternative dispute resolution institution in the financial sector is a manifestation of the mandate given to OJK through the Law, namely to carry out consumer complaint services, one of which facilitates the resolution of consumer complaints that are harmed by business actors in the financial sector.

Therefore, by approving LAPS SJK as an alternative dispute resolution institution in the financial sector, at least OJK can fulfill the mandate given by the Law, namely to facilitate the resolution of consumer disputes through alternative dispute resolution institutions that are given approval and supervision. Conversely, LAPS SJK, which has institutionally obtained approval from OJK as an alternative dispute resolution institution in the financial sector, has obtained juridical legality to perform its duties and functions to serve and resolve consumer dispute complaints which are part of the mandate of OJK according to the Law.

Thus, at least, the existence of LAPS SJK institutionally can help in reducing the burden of OJK duties, especially those related to complaint services and settlement of financial sector disputes between consumers and financial services sector business actors. Along with the explanation above, politically in the laws and regulations, LAPS



SJK has also gained recognition in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law).

Although nomenclature there are differences in terms with the previous term, namely in which case it is called the term LAPS SK (Alternative Financial Sector Dispute Resolution Institution), this certainly does not reduce the existence and main duties of LAPS SJK as an institution that is part of financial sector consumer protection efforts, especially to resolve disputes between consumers and financial sector business actors. Based on this, when viewed from the aspect of the factors that influence it, the legal politics of the formation of LAPS SJK are certainly influenced by the following factors:

1. Sociological factors, namely the demand for sociological needs that arise as a consequence of the development of the world of the financial services sector so that it is necessary to form an alternative dispute resolution institution in the financial sector that has an element of novelty, namely having the ability to resolve financial sector (Novkovic et al., 2022) disputes born from a financial system based on electronic systems and information technology.
2. The juridical factor, namely the recognition in Law Number 4 of 2023 concerning the Development and Strengthening of the Financial Sector (P2SK Law), which uses the nomenclature of the LAPS SK but this certainly does not reduce the existence and main duties of the LAPS SJK as an institution that is part of the financial sector consumer protection efforts, especially to resolve disputes between consumers and financial sector business actors (Mortensen & Kørnø, 2019).
3. Political factors, namely the existence of politics in the context of mutualistic institutional (Schaeffer et al., 2021) strengthening relations between LAPS SJK and OJK in which case by giving approval to LAPS SJK as an alternative dispute resolution institution in the financial sector, at least OJK is able to fulfill the mandate given by the Law, namely to facilitate consumer dispute resolution through alternative dispute resolution institutions that are given approval and supervision.

Financial system modernity factors, namely the existence of a financial system based on electronic systems and information technology which ultimately requires LAPS SJK with different innovations from the 6 (six) alternative financial services dispute resolution institutions that have been determined and contained in the previous OJK list. The formation of LAPS SJK has actually involved several important aspects that must also be considered. Meanwhile, these important aspects need to be underlined regarding the legal politics of the formation of LAPS SJK:

1. Dispute Resolution Needs. Admittedly, the increase in the number of disputes in the financial services sector encourages the need for efficient alternative dispute resolution institutions. Responding to these challenges, LAPS SJK was formed to provide a fast, fair, and efficient dispute resolution mechanism outside the court.



2. Regulation and Government Policies. The establishment of LAPS SJK was driven by government policies that wanted to increase consumer protection in the financial services sector, which is also due to the conditions that occur today because many consumers feel disadvantaged by financial sector business actors are increasingly troubling. Regulations from the OJK that govern the establishment and operation of LAPS SJK, ensure that this institution operates in accordance with established standards. LAPS SJK is expected to help the burden of OJK in terms of dispute resolution in the financial services sector while remaining under OJK supervision.
3. Alternative Principles of Dispute Resolution. The establishment of LAPS SJK prioritizes the principles of justice, equality, and transparency in the dispute resolution process. so as to facilitate dispute resolution through mediation and, arbitration ([Ferreira et al., 2022](#)), and binding opinion and can provide dispute resolution options to the parties involved. Efficiency and Effectiveness. With the establishment of LAPS SJK, of course, the government hopes to reduce the burden on the court and provide faster solutions and lower costs for the parties to the dispute. LAPS SJK is expected to focus on increasing effectiveness in dispute handling to reduce consumer dissatisfaction with dispute resolution ([Elziny et al., 2016](#)) in the financial services sector.
4. Supervision and Evaluation. The formation of LAPS SJK is inseparable from the supervision carried out by OJK to ensure compliance with applicable regulations and standards. Therefore, OJK always conducts periodic evaluations to improve the performance and responsiveness of this institution to the needs of dispute resolution for consumers in the financial sector.
5. Education and Socialization. Increasing public awareness and financial services business industry players about the existence and function of LAPS SJK. can be done through important education and socialization programs to ensure a good understanding of the available dispute resolution mechanisms.

Based on the explanation of the political aspects of the law towards the establishment of LAPS SJK, it aims not only to resolve disputes efficiently but also to increase public trust in the financial services sector through transparent and fair dispute resolution mechanisms. Therefore, the establishment of the LAPS SJK is expected to reduce the exemption of court and OJK duties.

### **Conclusion**

The formation of LAPS SJK from a historical perspective certainly aims to protect consumers, especially in the financial services sector if a dispute occurs. Therefore, the legal politics of regulation regarding FSS LASP cannot be separated and is an integrated part of the legal political scheme of consumer protection. Dispute resolution through the LAPS SJK is expected to provide legal certainty to the parties because the LAPS SJK decision is final and binding, requiring a relatively short examination period, and less budget than dispute resolution carried out through a public court. Institutionally, the legal politics of establishing LAPS SJK is motivated by 3 (three) reasons. The initial reason is the establishment of OJK which has a determinant role and function to supervise integrated financial services business activities for the capital market, banking, and non-banking sectors. Another reason is



the reality of the advanced development of technology in the global financial services sector, and the last reason is the need of the parties involved in the financial services sector industry; both consumers and finance actors who need an ideal out-of-court dispute resolution institution.

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### Declarations

Author contribution : Author 1: conduct the research ideas, instrument construction, data collection, analysis, and draft writing; Authors 2 and 3: conduct the research ideas, literature review, data presentation and analysis, and the final draft. Authors 4 and 5: revised the research ideas, literature review, data presentation and analysis, and the final draft.

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