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Legal Analysis of Malaysia's Integrated Dispute Resolution Scheme: Lessons from Other Countries

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Abstract

The Central Bank of Malaysia and the Securities Commission Malaysia have suggested a consolidation to establish the Integrated Dispute Resolution Scheme (IDRS) for Malaysian financial consumers. The objective of the merger is to streamline and enhance the procedures for resolving disputes. This study examines the legal perspective in determining the most effective legal structures for resolving disputes efficiently. The study employs qualitative data and secondary data from Indonesia and Australia to acquire insights. The study emphasises the potential advantages of the IDRS, such as enhanced dispute resolution services, greater outcomes, and increased satisfaction for consumers seeking alternative dispute resolution platforms.

Keywords: Integration; Financial Dispute; Consumer Protection; Malaysia

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1.0 Introduction

Implementing alternative dispute resolution (ADR) in Malaysia has been widely accepted in resolving financial disputes, especially in recent years. Since the world is changing and becoming more dynamic, the ADR mechanism is being provided quickly, inexpensively, and fairly by the people (Greenhalgh, 2019). According to the Ombudsman for Financial Services (OFS), one of the ADR institutions in Malaysia, there have been more than 5,000 eligible financial disputes resolved from 2018 through 2022 (OFS, 2022). It shows great potential for the ADR mechanism to be the preferred platform for resolving disputes regarding financial services sectors through out-of-court settlement.

Besides OFS deals with banking and insurance disputes, the Security Industries Dispute Resolution Centre (SIDREC) takes place for capital market disputes. Both institutions are recognised as active members under the International Network of Financial Services Ombudsman Schemes (INFO Network, 2007). After several years of operating as the dispute resolution body, in 2023, there was a suggestion by both regulators to combine and merge those institutions into one single entity, known as the Integrated Dispute Resolution Scheme (IDRS). This will improve resolving disputes in Malaysia's financial services and capital markets in the upcoming years (OFS,

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2022). Simultaneously, it may enhance the quality of dispute resolution services and increase satisfaction and protection for consumers seeking alternative dispute resolution platforms.

It is believed that this integration may significantly impact Malaysian society. As in Indonesia, the Alternative Institution for Dispute Resolution in the Financial Services Sector (LAPS SJK) was established in 2021 as the new entity, replacing the six previous financial institutions to govern many areas of financial scope and customers, including fintech (Nurhayati et al., 2022). In Australia, the Australian Financial Complaints Authority (AFCA) institution was introduced in 2017 to avoid overlapping jurisdiction and inconsistent outcomes for the complainant (Noone & Ojelabi, 2020).

Accordingly, this study examines the current institutions in how it can enhance access to justice for Malaysian consumers, especially on the legal frameworks to have a better experience in resolving disputes in financial transactions. By examining other nations, such as Indonesia and Australia, this study explores the best practices of several existing institutions under one roof.

1.1 Problem Statement

The establishment of IDRS combines two different segments of customers and services. Therefore, it must be noted that this integration will affect the institution's legal perspectives and regulatory framework.

In general, OFS caters to individual customers seeking assistance with their banking and insurance matters. Meanwhile, SIDREC serves individual investors or sole proprietors who need support for capital markets services and products. Since both institutions are subject to different regulatory regimes, the current worry is that there is no standard legal framework or set of rules governing IDRS operations. This lack of a regulatory framework can lead to inconsistencies and potential conflicts between their services. Additionally, the current legislation for OFS implements the ombudsman scheme as provided in the Financial Services Act 2013 (FSA) and Islamic Financial Services Act 2013 (IFSA) under sections 126(2) and 138(2), respectively. However, for SIDREC, there is no ombudsman scheme implemented in the Capital Markets and Services (Dispute Resolution) Regulations 2010, which conferred the power from subsection 378(1) and paragraph 379(b) of the Capital Markets and Services Act 2007. This disparity in the legislative framework may create inconsistencies in the customer resolution process, leading to potential dissatisfaction and mistrust in the financial industry.

Regarding jurisdiction, there are similarities in the restricted thresholds; both institutions exclusively encompassed cases that exceeded RM 250,000.00 for the maximum monetary claim. However, if the claimant of SIDREC would like to bring the matter beyond the specified amount, they are required to pay a fair fee to SIDREC. Meanwhile, for OFS, it is still provided without any cost. This difference in fee structure between SIDREC and OFS may discourage some claimants from pursuing their cases further if the monetary claim exceeds the specified amount.

This study strongly believes that integration may result in a very positive impact on access to justice in society. Therefore, by providing several recommendations for establishing IDRS, the regulators and policymakers can consider the suggestions provided in this study.

1.2 Research Questions and Objectives

Several questions are discussed in this study. Among others,

1. What are the similarities and differences the current OFS and SIDREC?
2. 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?
3. What are the legal recommendations that can be suggested to the relevant authorities?

The primary objective of this study is to identify the similarities and differences between the current institutions. This study also aims to help Malaysian regulators incorporate best practices from other relevant jurisdictions to maximise the overall stability of the financial services industry in Malaysia. Ultimately, the most optimal legal frameworks and practices can be recommended to Malaysian regulators.

2.0 Literature Review

In 2007, the importance of an ombudsman in financial disputes was seen in establishing the International Network of Financial Services Ombudsman Schemes (INFO Network) as a worldwide platform for financial service ombudsmen. It has been established to develop expertise in dispute resolution on financial disputes, including banking, credit, investments, insurance, financial advice, and pensions. Including Malaysia, 55 other institutions under the Info Network implement the financial ombudsman as an independent and out-of-court settlement that resolves consumer complaints against banks, insurers, and other financial services providers (INFO Network, 2007).

2.1 The history of the ombudsman mechanism in Malaysia

The ombudsman was introduced first in public administration before it expanded the service to consumer protection and business regulation. In Swedish, the term ombudsman refers to a proxy or representative. In Malaysia's legal definition, it is defined as an independent officer of the OFS appointed by the board of directors to adjudicate disputes fairly and speedily away from the courts or any other legal means. The ombudsman mechanism is one of the most essential and relevant alternatives for dispute resolution, besides having the court as the central platform to resolve disputes.

The integration of several institutions started many years ago. Historically, the current OFS institution has been renamed the Financial Mediation Bureau (FMB), established in 2004 after the launch of the Financial Ombudsman Scheme in Malaysia in 2016. The FMB combined two previous institutions known as the Insurance Mediation Bureau (IMB) since 1992 and the Banking Mediation Bureau (BMB), which dealt with insurance and banking products separately.

After almost a decade of operating the ombudsman scheme, OFS has emerged as a benchmark for various government agencies and units, including the Unit Integriti dan Ombudsman Sarawak (OFS, 2022). In the end, the ombudsman is emerging as one of the most accepted ADR mechanisms, in line with mediation and arbitration in Malaysia.

2.2 The development of LAPS SJK in Indonesia

Under its regulatory body, the Financial Services Authority (OJK) established the Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK) in 2020 for Indonesians to resolve disputes relating to the financial industry. It is considered the new entity that continues and runs the functions of the previous six LAPS institutions. Starting in 2021, the establishment of LAPS SJK abolished all six LAPS, with the addition of the fintech sector, as mentioned under their OJK Regulation no. 61 of 2020 (Abubakar & Handayani, 2021; Nurhayati et al., 2022).

LAPS SJK provides several services, such as mediation, arbitration, and binding opinions, for the Indonesian consumer to choose which mechanism satisfies the disputes among the parties. After three years of operation, LAPS SJK resolved almost 6,000 complaints from 1 January 2021 to 31 December 2023, dominated by the banking, fintech p2p lending, and financing sectors. This shows the effectiveness of the LAPS SJK in handling financial disputes and provides a better channel for consumers.

With almost 1350 current members registered from many sectors, LAPS SJK can continue to serve the people in Indonesia and be the most preferred alternative dispute settlement platform among the citizens.

2.3 The establishment of AFCA in Australia

In May 2017, the Australian Financial Complaints Authority (AFCA) was established by the federal government to handle the dispute of the previous external dispute resolution body, namely the Financial Ombudsman Service (FOS) and the Credit and Investments Ombudsman (CIO) and the Superannuation Complaints Tribunal (SCT). AFCA operates a single external complaint resolution scheme for consumers and small businesses that complain about a financial firm (the members) as an alternative to tribunals and courts (AFCA, 2022). AFCA is considering the types of disputes involving credit, loans and finance, insurance, banking payments and transactions, investments, financial advice, and superannuation. Surprisingly, the Chief Ombudsman and Chief Executive Officer of AFCA reported receiving more than 400,000 complaints after six years of operation (Ford, 2023). This amount portrays how much the people in Australia utilised the services provided by AFCA and, impliedly, put a high level of confidence and trust in the ombudsman mechanism.

In the end, by examining the previous studies, there are no articles exploring the integration of the current institutions that operate the ombudsman scheme for financial disputes in Malaysia. Therefore, there is a need for the current study to provide a foundation for this matter to strengthen the implementation of the ombudsman scheme in Malaysia, especially in the financial sector. This study chose the Indonesian and Australian jurisdictions as a benchmark in exploring the effectiveness of the integration of the institutions in dealing with financial disputes. By comparing and analysing the outcomes of such integration, valuable insights can be gained to inform potential improvements in Malaysia.

3.0 Methodology

This study employs a qualitative approach to collect data through focus group discussions with several OFS officers and thoroughly examining secondary data. The meeting sessions with OFS officers provide dynamic real-life interaction and valuable insights into their experiences and perspectives on consolidating the integration institutions (Yayeh, 2021). Additionally, thoroughly examining secondary data allows for a comprehensive analysis of current laws and regulations.

3.1 Method

The method used in the selection of respondents was based on a combination of expertise, experience, and diversity to ensure a comprehensive understanding of the integration process, in conducting the focus group discussion. All gathered data were systematically analysed using qualitative analysis techniques to identify common themes and patterns across different perspectives (Schutt, 1995). By triangulating primary and secondary data, a more robust understanding of the integration process was achieved and portrayed (Farquhar et al., 2020).

3.2 Data Collection

Using online databases such as Scopus, Web of Science, Lexis Advance Law, and Current Law Journal, this study searches for relevant articles and papers using keywords such as 'integration,' financial disputes', and 'consumer protection' with more than 5000 results. By using the advanced keywords of 'Malaysia', 'Indonesia' and 'Australia', it has been narrowed to 500 results. After the screening and exclusion process, the remaining 20 kinds of literature are bound to contribute significantly to this study.

3.3 Data Analysis

The data gathered is analysed and evaluated to identify best practices for successful institutional integration. The significant lesson from the chosen jurisdiction provided a more comprehensive picture of the integration process, resulting in valuable insights and recommendations for development.

4.0 Findings

4.1 Similarities and Differences between OFS and SIDREC

Before integrating both institutions, this study would like to compare them to see whether they can be merged as one single entity.

Table 1: Comparison between OFS and SIDREC in Malaysia

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Category/ Institution	OFS	SIDREC
SIMILARITIES		
Status	Active members of INFO Network in Malaysia	
Role	Act as an ADR platform to help complainants with disputes against their members and out-of-court settlements.	
Procedure	Two-tier stage (Case Management and Adjudication)	
DIFFERENCES		
Regulator	Central Bank of Malaysia	Security Commission Malaysia
Legislation	1. Financial Services Act 2013 2. Islamic Financial Services Act 2013 3. Financial Services (Financial Ombudsman Scheme) Regulation 2015 4. Islamic Financial Services (Financial Ombudsman Scheme) Regulations 2015	1. Capital Markets and Services (Dispute Resolution) Regulations 2010 2. SIDREC Terms of Reference 3. SIDREC Constitution
Eligible Complainant	1. Individual Consumer 2. Small-Medium Enterprise	1. Individual Investor 2. Sole-Proprietor
Members	1. Banking 2. Insurer 3. Development Financial Institution 4. Payment Instrument Issuer 5. Financial Adviser 6. Broker	1. Securities 2. Fund Management 3. Derivatives 4. Private Retirement Schemes
Jurisdiction	1. Financial service and product: up to RM250,000 2. Motor third-party property damage: up to RM 10,000 3. Unauthorised transaction: up to RM 25,000	1. Mandatory Scheme: up to RM 250,000 2. Voluntary Scheme: more than RM 250,000
Third-Party Involvement	Case Manager / Ombudsman	Case Manager / Adjudicator
Fee and Cost	Free for all situation	Free, except for complaints above RM 250,000, require RM 500 up to RM5000.

Source: Constitution of OFS, 2021; OFS Terms of Reference, 2016; OFS, 2022; Sharma et al., 2020

Table 1 shows the relevant aspects that must be considered in merging these two institutions. Both institutions have their strengths and weaknesses, which lead to advantages and challenges in consolidating the two. While both institutions operated as active ADR platforms using case management and adjudication procedures, the differences in core legislative frameworks and jurisdictions may be a factor that needs to be firstly catered to. The different segments of targets and members also be the biggest issues in integrating them. The fee structure can also be harmonised to attract the complainant to have better access to justice.

4.2 Comparative study of similar dispute resolution with Indonesia and Australia

After several years of operating the integration institution, Indonesia and Australia can be the best examples of proving the effectiveness of the integration institution. The table below summarises several categories that can be relevant to the similarities and differences between the jurisdictions.

Table 2: The comparison between Indonesia and Australia

Category/ Country	Indonesia	Australia
Integration/Replacement	Indonesian Insurance Mediation and Arbitration Agency (BMAI), Indonesian Capital Market Arbitration Agency (BAPMI), Pension Fund Mediation Agency (BMDP), Indonesian Banking Alternative Dispute Resolution Institute (LAPSPI), Arbitration and Mediation Agency for Indonesian Underwriting Companies (BAMPPPI), and Indonesian Mediation for Financing, Pawnshop, and Venture Agency (BMPPVI)	The Financial Ombudsman Service, the Credit and Investments Ombudsman, and the Superannuation Complaints Tribunal.
Current Institution	Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK)	Australian Financial Complaints Authority (AFCA)
Legislation prepared by	Self-Regulatory Organisation (SRO)	Australian Financial Complaint Authority Limited (company limited by guarantee)
Procedure	Mediation, Arbitration, and Binding Opinion	Informal (Negotiation or conciliation) and Formal (preliminary assessment and determination)
List of relevant legislation	1. Financial Services Authority Regulation (POJK) Number 61/POJK.07/2020 2. Mediation regulations 3. Arbitration regulations 4. Binding Opinion regulations	1. Corporation Act 2001 2. Treasury Laws Amendment (Putting Consumers First—Establishment of the Australian Financial Complaints Authority) Act 2018 (Cth) 3. AFCA Rules 4. AFCA Operational Guideline
Jurisdiction and Sector	Both conventional and Syariah for banking, capital markets, insurance, financing, pawnshops, venture capital, pension funds, guarantee, and fintech sector. No monetary limit is	1. Superannuation - No monetary limit 2. Others (credit, loans and finance, insurance, banking payments, transactions, investments, and financial

	provided.	advice): up to \$1263000 (RM 3926869.08)
Middle Party Involvement	Mediator / Arbitrator	Ombudsman / Adjudicator / AFCA Panel Member
Total number of Middle parties	More than 100 mediators and arbitrators	More than 100 ombudsman and officers
Cost and Fee	Free but impose some fees on certain situations	Free

Source: AFCA, 2022; Agus et al., 2022; Australian Financial Complaints Authority, 2020; Diniyya et al., 2021; Greenhalgh, 2019; Ilias et al., 2023; Schmulow et al., 2020)

Based on Table 2 above, Indonesia and Australia took an excellent approach to developing the institution. Even having some challenges in Indonesia, the Self-Regulatory Organisations (SROs) have taken the initiative to develop LAPS SJK as a new entity and abolish the previous six institutions. Meanwhile, Australia drafted the rules and regulations and presented them to the Ministry for Revenue and Financial Services to get consent before establishing the AFCA Act.

While integration may reduce operational costs, the multiple existence of the ADR bodies can also increase confusion among the people. It is, therefore, a strong reason for the IDRS to be established and to harmonise between the OFS and SIDREC by following those selected countries. This study agrees that both countries have successfully implemented various policies and frameworks that enhance the trust and confidence of the people, nevertheless the challenges also can be different due to cultural and regulatory differences. Malaysia must learn from these countries' experiences and adapt their successful strategies to suit our unique circumstances.

5.0 Discussion

Establishing the IDRS will be another milestone for Malaysia in dealing with financial disputes in many sectors. However, it cannot be denied the complexity and multifaceted issue that requires careful consideration of regulatory frameworks and potential conflicts of interest arising from the integration. Even if it can lead to increased efficiency and cost savings, the focus on consumer protection must be primarily upheld.

By having the new IDRS in place, Malaysia will be able to provide a more efficient and streamlined process for resolving financial disputes. This will enhance investor confidence and attract more foreign investments, further boosting the country's economic growth. This study admitted that the idea of consolidating the institutional may help the country to be as successful as Australia and Indonesia which can receive more complaints and resolve more disputes between the relevant parties. Both OFS and SIDREC have their strengths and weaknesses, which can be catered to through the integration of the IDRS, after considering several aspects from Australia and Indonesia, especially in terms of proper legal frameworks, wider jurisdictions and free-of-charge services in any situation. The secondary data includes insights from Indonesia and Australia, where institutions have effectively integrated for the benefit of their populations. Studying Indonesia's successful new single institutions could provide valuable insights into best practices and potential strategies for implementation. Similarly, Australia's experience in effectively integrating institutions can offer valuable guidance on addressing challenges and ensuring a smooth transition for OFS officers in the IDRS.

In improving the idea from the lessons learned from those countries, the institution must prepare comprehensive rules and regulations and get government authorization. With a clear framework, it may be easier for customers to understand their rights and responsibilities when utilising the services offered by IDRS. Overall, the implication of the study subsequently supports the idea of both regulators to further improve their dispute resolution mechanisms through out-of-court settlement. Providing a one-stop centre and centralised platform for the complainant resulted in a more consistent approach and promoted confidence and trust in the financial system.

6.0 Conclusion and Recommendation

In dealing with various kinds of financial products and services that continue to happen, Malaysia's regulators take an approach to enhancing consumer protection to develop a single entity that caters to the needs of every individual. The proper and comprehensive regulatory frameworks for redress need to be set up to impact the future development of the IDRS in Malaysia. This study discusses the current limitations and possible solutions to harmonise ombudsman services and protect financial consumers. Since the upcoming development will change consumers' operational landscape and preferences, the study draws on some comparative analysis of experiences concerning integration that have already occurred in Indonesia and Australia.

In proposing specific reforms of regulation based on lessons learned from other countries, this study suggests that regulators and policymakers embed a new legal framework to enhance financial jurisdiction and engage in the current practice. Among others, several clauses may be added, including the broader implementation of ombudsman services, a fee structure for every kind of dispute that is free of charge, the voluntary scheme also imposed on the OFS, a higher monetary limitation of up to RM500,000, and a minimum number of 10 third-party officers in dealing with the disputing matters. The official name also can be considered as, "Financial Ombudsman Resolution Malaysia" (FORM) which emphasises its focus on resolving financial disputes while highlighting its Malaysian identity. Incorporating a memorable tagline or slogan that effectively communicates the institution's mission and values, such as "Resolving Financial Disputes, Empowering Malaysians".

This study is limited in scope to the comparison between Malaysia's financial system with Indonesia and Australia's financial institution, omitting the other nations that have also integrated the institutions. Further study could include more successful countries for

a more complete analysis. Another limitation is that the study only considers the legal viewpoint, ignoring social and cultural aspects that could also have an impact on how successful financial institutions are in other nations. These elements might be included in future research to offer a more thorough grasp of the topic.

Overall, the effort to merge these institutions may have significant benefits and more tremendous legal implications for the financial industry in Malaysia. Since the idea of consolidating the institutions is being considered, it is crucial to examine the potential implications and consequences of such a move on the legal framework and regulatory environment of the industry.

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Paper Contribution to Related Field of Study

This study may contribute to the research field of dispute resolution, comparative analysis research, and the ombudsman in particular.

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