

EFFICIENCY OF CONSUMER DISPUTE SETTLEMENT AGENCY IN CONSUMER DISPUTE SETTLEMENT IN INDONESIA

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Abstract

The purpose of this study is to determine the legal protection of consumers by BPSK, the role of BPSK in consumer dispute resolution. This research is a normative research, namely legal research that puts the law as a building norm system. The enactment of Law Number 8 of 1999, State Gazette of the Republic of Indonesia Number 42 of 1999 concerning Consumer Protection (UUPK) is a very significant development in the development of consumer protection law in Indonesia to create a just and prosperous society that is evenly material and spiritual in this era economic democracy based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Based on the provisions of Article 45 paragraph (2) of the UUPK above, consumer dispute resolution can be pursued through the courts or out of court based on the voluntary choice of the disputing parties. Legal protection for consumers is important in maintaining the balance of legal relations between producers and consumers, so it is necessary to have principles of legal protection for consumers that can be a reference in protecting consumers. The results of the settlement of consumer disputes by means of consolidation, mediation, and arbitration are made in a written agreement signed by the consumer and the business actor concerned, further strengthened by the decision of the Assembly signed by the Chairman and members of the Assembly.

Keywords: *Legal Protection, Consumer Protection, Dispute Resolution.*

Introduction

The development of technology and information in the community also develops rapidly in carrying out transactions of goods or services to pass through foreign countries. Efforts to provide easy access for consumers to transact goods and/or services via the Internet or online shopping through *e-commerce*. By

developing public interest and being given convenience in transacting goods and/or services through the internet, it provides more profound benefits for consumer needs to be more accessible, and consumers easily choose various types of goods they want. But on the other hand, some problems lead to disputes related to these transactions that cannot be avoided.¹

The birth of Law Number 8 of 1999, Statute Book of the Republic of Indonesia Number 42 of 1999 concerning Consumer Protection (UUPK) is a very meaningful development in the development of consumer protection law in Indonesia to realize a just and prosperous society that is evenly distributed materially and spiritually in the era of economic democracy based on Pancasila and the 1945 Constitution of the Republic of Indonesia. Based on the provisions of Article 45 paragraph (2) of the UUPK mentioned above, the settlement of consumer disputes can be pursued through the court or out of court based on the voluntary choice of the parties to the conflict.²

Trubek pointed out that some disputes are unsuitable for court proceedings, such as family disputes, controversy disputes between neighbours, demands that include a small amount of money, and problems that arise in managing long-term trade relations.³

Erman Suparman stated that the use of the modern judicial system as a means of distributing justice has proven to encounter many obstacles. Because the contemporary judiciary is filled with rigid procedures, processes, bureaucracy, and methodologies. Thus, the justice provided by the judicial body is realized by bureaucratic decisions in the public interest.

¹ Rida Ista Sitepu and Hana Muhamad, "Efektifitas Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 2 (June 21, 2022): 7–14, <https://doi.org/10.52005/rechten.v3i2.79>.

² Riris Nisantika and Ni Luh Putu Egi Santika Maharani, "Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Locus Delicti* 2, no. 1 (July 1, 2021): 49–59, <https://doi.org/10.23887/jld.v2i1.458>.

³ Apriliani Kusnadi and Devi Siti Hamzah Marpaung, "Efektifitas Penyelesaian Sengketa Konsumen Melalui Proses Di Luar Pengadilan (Melalui Jalur Mediasi)," *Wajah Hukum* 6, no. 1 (May 1, 2022): 80, <https://doi.org/10.33087/wjh.v6i1.710>.

The proliferation of goods and services traded and exchanged on social networks by unscrupulous merchants often inflicts losses on consumers. As a consumer, you certainly want to get good treatment or service from business people. However, the treatment of entrepreneurs often harms consumers. For example, selling food in the past, finding newly purchased defective goods, providing product information that does not match the product being sold, or consumers often face unsatisfactory service even when they pay a lot of money to get the item, goods or services.⁴

The main problem of merchants harming consumers is that when consumers feel disadvantaged by merchants, they think that they do not know the existence of the Consumer Dispute Resolution Agency (BPSK) as a point of appeal.

With the promulgation of Consumer Protection Law Number 8 of 1999, it is hoped that the public can better understand their rights and obligations based on consumer and corporate actors' awareness of corporate social responsibility.

Establishing the Consumer Dispute Resolution Agency (BPSK) is a breath of fresh air for consumer protection. Where BPSK is a non-structural institution and is domiciled in a Level II Region or Regency/City, the main task and function is to resolve if there is a conflict between the product or service user and the manufacturer or seller in a non-litigation manner. The community is given the convenience of making complaints in resolving consumer protection disputes by establishing a Consumer Dispute Resolution Agency formed in each region.⁵

From some of the definitions above, conflict is often referred to in sociological studies, while legal and anthropological studies focus on the term dispute. Legal disputes are a standard term in legal science, especially those related to civil cases, to distinguish from criminal acts in criminal cases.

⁴ Rista Veria Dewi and Djulaeka Djulaeka, "The Legal Protection of Consumers for Acquisition PDAM Clean Water Service (The Case Study Of PDAM Surabaya City)," *Trunojoyo Law Review* 2, no. 2 (January 10, 2021): 98–117, <https://doi.org/10.21107/tlr.v2i2.9498>.

⁵ Niru Anita Sinaga and Nunuk Sulisrudatin, "Pelaksanaan Perlindungan Konsumen Di Indonesia," *JURNAL ILMIAH HUKUM DIRGANTARA* 5, no. 2 (June 3, 2014): 112–25, <https://doi.org/10.35968/jh.v5i2.110>.

Dispute is a universal phenomenon encountered in any society of all backgrounds. How the dispute is resolved, there is no uniform form, meaning that the disputing party can take a variety of action options with the aim that the dispute can be resolved.⁶

Article 45 paragraph (2) of the UUPK explains that the settlement of consumer disputes can be pursued through the court or outside the court based on the voluntary choice of the parties to the dispute. Meanwhile, article 45 paragraph (4) explains that if an attempt to resolve a consumer dispute outside the court has been chosen, a lawsuit through the court can only be taken if the attempt is declared unsuccessful by one of the parties or by the parties to the dispute.

Article 47 of Law Number 8 of 1999 concerning Consumer Protection states that out-of-court settlement of consumer disputes is held to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that it will not happen again or will not repeat the losses suffered by consumers. To resolve consumer disputes outside the court, a Consumer Dispute Resolution Agency (BPSK) was formed as regulated in Article 49 of Law Number 8 of 1999 Consumer Protection, namely "the government establishes a consumer dispute resolution body in level II regions (now Regencies or Cities) to resolve consumer disputes outside the court".⁷ Based on the background above, the researcher then formulates the subject matter to be studied, namely a. How is the legal protection of consumers by BPSK? What is the role of BPSK in resolving consumer disputes?

⁶ Alfina Maharani and Adnand Darya Dzikra, "Fungsi Perlindungan Konsumen Dan Peran Lembaga Perlindungan Konsumen Di Indonesia: Perlindungan, Konsumen Dan Pelaku Usaha (Literature Review)," *Jurnal Ekonomi Manajemen Sistem Informasi* 2, no. 6 (July 11, 2021): 659–66, <https://doi.org/10.31933/jemsi.v2i6.607>.

⁷ Jaidatul fikri Binti Muhammad, "Makanan, Obat-Obatan Serta Kosmetik Ilegal Dalam Efektivitas Hukum Islam Dan UUJPH Di Aceh," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam* 11, no. 1 (October 23, 2019): 23–43, <https://doi.org/10.32505/jurisprudensi.v11i1.1061>.

Methods

This research is normative research, that is, legal research that puts the law as the building of a system of norms. The norm system in question is about the principles, norms, rules of laws and regulations, court decisions, treaties and doctrines (teachings). In normative legal research, library materials are basic data that in (science) research is classified as secondary data. The secondary data has a very wide scope, so it includes personal letters, diaries, books, to official documents issued by the government.⁸

The approach used is the *statute approach and the conceptual approach*. The statutory approach is a study of legal products. This approach is carried out to review laws or regulations related to researchers' research. While the conceptual approach is a research on legal concepts, such as legal sources, legal functions, legal institutions, and so on. This approach draws from the views and doctrines that developed within the legal sciences. This approach is important because understanding the views / doctrines that develop in legal science can be a foothold to build legal arguments when resolving legal issues at hand. Views/doctrines will clarify ideas by providing legal understandings, legal concepts, and principles relevant to the problem.⁹

Discussion

Consumer Legal Protection by the Consumer Dispute Resolution Agency (BPSK)

In an effort to provide legal protection for consumers, the state has an important role in protecting consumers when there is a dispute between consumers and business actors to protect the rights and obligations of the two parties to the dispute.

⁸ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

⁹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media, 2019), 79.

As stated in Law Number 9 of 1999 concerning Consumer Protection in Article 4 related to the right of consumers to make a transaction to business actors, namely consumer rights are:¹⁰

1. the right to comfort, security, and safety in consuming goods and / or services;
2. the right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and the conditions and guarantees promised;
3. the right to true, clear, and honest information regarding the condition and guarantee of goods and / or services;
4. the right to be heard for their opinions and complaints on the goods and / or services used;
5. the right to advocacy, protection, and appropriate resolution of consumer protection disputes;
6. the right to receive coaching and consumer education;
7. the right to be treated or served properly and honestly and non-discriminatoryly;
8. the right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
9. Rights stipulated in the provisions of other laws and regulations.

Thus, consumers have protection and consumers also need to have and increase awareness of knowledge and accuracy in carrying out transactions of goods and / services by business actors and with the existence of consumer rights regulated in the UUPK, consumers can know their own protection as consumers.

Socialization of UUPK to the public, especially the public, does not know what are the rights and obligations obtained by these consumers, because problems

¹⁰ Raka Wicaksono, Andriyanto Adhi Nugroho, and Rosalia Dika Agustanti, "Perlindungan Hukum Terhadap Konsumen Indihome Ditinjau Dari Undang-Undang Perlindungan Konsumen," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (December 31, 2021): 149-59, <https://doi.org/10.31289/jiph.v8i2.4793>.

related to consumers very often occur due to the consequences of consumer incomprehension. To increase consumer awareness and awareness in article 5 of the UUPK, it is explained that consumers also have the following obligations:¹¹

- a) Read or follow information instructions and procedures for the use or utilization of goods and / or services, for security and safety;
- b) Good faith in making transactions for the purchase of goods and / or services;
- c) Pay according to the agreed exchange rate;
- d) Follow efforts to resolve consumer protection disputes appropriately.

The implementation of UUPK to provide legal protection both to separate consumers and business actors is given legal protection for small and large business actors. This is done by applying sanctions and fines for violations committed by both consumers and business actors.

Article 6 of the Consumer Protection Law, formulating the rights of business actors are:¹²

- a) the right to receive payment in accordance with the agreement on the conditions and exchange rate of the goods and/or services traded;
- b) the right to legal protection from bad faith consumer actions;
- c) the right to self-defense duly in the legal settlement of consumer disputes;
- d) The right to rehabilitation of good name if it is legally proven that consumer losses are not caused by goods and/or services traded
- e) Rights stipulated in the provisions of other laws and regulations.

Article 7 formulates the obligations of business actors as follows:

- a. good faith in carrying out its business activities;
- b. provide true, clear and honest information regarding the condition and guarantee of goods and / or services and provide explanations for use, repair and maintenance;

¹¹ Gomgom T.P Siregar and Muhammad Ridwan Lubis, "Sosialisasi Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Di Lingkungan Universitas Darma Agung," *PKM Maju UDA* 1, no. 3 (February 2, 2021): 100, <https://doi.org/10.46930/pkmmajuuda.v1i3.881>.

¹² Siregar and Lubis, 113.

- c. treat or serve consumers in a correct and honest and non-discriminatory manner;
- d. guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards for goods and/or services;
- e. providing opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or guarantees for goods made and/or traded;
- f. compensate, indemnify and/or compensate for losses due to the use, use and utilization of goods and/or services traded;
- g. provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Article 44 of UUPK provides a forum for consumers to protect their rights as a form of consumer protection law, so a non-governmental consumer protection agency was formed. Non-state consumer protection agencies have the opportunity to play an active role in implementing consumer protection.¹³

Based on Article 1 number 9 of the Consumer Protection Law, the Non-Governmental Consumer Protection Agency (LPKSM) is a non-governmental institution registered and recognized by the government that has activities to handle consumer protection.

The duties of the Non-Governmental Consumer Protection Agency (LPKSM) as regulated in Article 44 paragraph (3) are:¹⁴

- a) disseminate information in order to increase awareness of the rights and obligations and prudence of consumers in consuming goods and / or services;

¹³ Kurniawan Kurniawan, "Permasalahan Dan Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Dinamika Hukum* 12, no. 1-17 (January 15, 2012), <https://doi.org/10.20884/1.jdh.2012.12.1.113>.

¹⁴ Kurniawan, 7.

- b) providing advice to consumers who need it;
- c) cooperate with relevant agencies in efforts to realize consumer protection;
- d) assist consumers in fighting for their rights, including receiving consumer complaints or complaints;
- e) Conducting joint government and community supervision of the implementation of consumer protection.

Legal protection for consumers is important in maintaining a balance of legal relations between producers and consumers, so it is necessary to have legal protection principles for consumers that can be a reference in providing protection to consumers. Thus, consumers are facilitated by referring to Law Number 9 of 1999 concerning Consumer Protection which is a paradigm of the principle of legal protection for consumers in Indonesia.¹⁵

The Role of BPSK in Consumer Dispute Resolution

Dispute resolution that arises in the business world, is a problem in itself, because if business people face certain disputes, then they will face a long-lasting judicial process and require a lot of money, especially in the business world, the settlement of consumer protection disputes that are granted is one that can take place quickly and cheaply. In addition, dispute resolution in the business world is expected to as much as possible not damage the subsequent business relationship with whom he has been involved in a dispute. This is certainly difficult to find if the party concerned brings the dispute through the court (litigation), it will end in the defeat of one party and the victory of the other party. In addition, in general, various criticisms of dispute resolution can be raised through the courts.¹⁶

¹⁵ Ahmadi Miru, *Principles of Legal Protection for Consumers in Indonesia* (Depok: Rajawali Pers, 2017).

¹⁶ Indah Sari, "Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan," *JURNAL ILMIAH HUKUM DIRGANTARA* 9, no. 2 (June 3, 2014): 87-102, <https://doi.org/10.35968/jh.v9i2.354>.

The Consumer Dispute Resolution Agency (BPSK) is formed based on the Law where each Regency / City must be formed in accordance with the sound of article 40 has an important task with the function and purpose of resolving consumer disputes outside the court (non-litigation) quickly, easily, and cheaply. When designed, such as adopting an alternative dispute resolution (ADR) method typical of Indonesia which can be seen from the terminology used in resolving consumer disputes with the availability of 3 (three) ways of dispute resolution, namely by conciliation, mediation, and arbitration.¹⁷

The legal basis for the establishment of the Consumer Dispute Resolution Agency (BPSK) is inseparable from Article 49 paragraph (1) of the UUPK and the Regulation of the Minister of Trade Number 06 / Mdag / Per / 2017. With the enactment of the Law related to the establishment of the Consumer Dispute Resolution Agency, BPSK applies in every province/city area.

The government's efforts to make it easier for consumers to reach BPSK, so that consumers are facilitated to solve their problems in terms of legal protection where consumers are kenedaki. The Consumer Protection Act requires the trial of consumer dispute cases to be conducted around or in the consumer's residence area and make it easier and shorter timeframes.

Article 52 of the UUPK states that the duties and authorities of the Consumer Dispute Resolution Agency include:¹⁸

- a. carrying out the handling and resolution of consumer disputes by means of mediation or arbitration or consolidation;
- b. Provide consumer protection consulting;
- c. supervise the inclusion of standard clauses:

¹⁷ Rika Lestari, "Perbandingan Hukum Penyelesaian Sengketa Secara Mediasi Di Pengadilan Dan Di Luar Pengadilan Di Indonesia," *Jurnal Ilmu Hukum* 4, no. 2 (January 16, 2013): 217, <https://doi.org/10.30652/jih.v3i2.1819>.

¹⁸ Kurniawan, "Permasalahan Dan Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)," 15.

- d. report to the general investigator in case of violation of the provisions of this Act;
- e. receiving complaints, both written and unwritten, from consumers about the occurrence of violations of consumer protection;
- f. conduct research and examination of consumer protection disputes;
- g. summoning businesses suspected of violating consumer protection;
- h. calling and presenting witnesses, expert witnesses and/or any person deemed to be aware of a violation of this Act;
- i. request the assistance of investigators to present business actors, witnesses, expert witnesses, or any person referred to in letter g and letter h, who is not willing to comply with the summons of the consumer dispute resolution body;
- j. obtain, research and/or assess letters, documents, or other evidence for investigation and/or examination;
- k. decide and establish the presence or absence of losses on the part of the consumer;
- l. notifying decisions to business actors who violate consumer protection;
- m. impose administrative sanctions on business actors who violate the provisions of this law.

An Assembly carries out the settlement of consumer disputes by BPSK formed based on the Decree of the Chairman of BPSK and assisted by the Registrar. The number of members of the assembly as referred to in paragraph (1) shall be odd, and at least 3 (three) persons representing all the elements referred to in Article 49 paragraph (3) shall be assisted by a clerk. Meanwhile, the Registrar is appointed from the members of the BPSK Secretariat.¹⁹

¹⁹ Yusuf Shofie, "Optimalisasi Peran Badan Penyelesaian Sengketa Konsumen (Bpsk) Dalam Penyelesaian Sengketa Pembiayaan Konsumen Di Tengah Terjadinya Disharmonisasi Pengaturan," *ADIL: Jurnal Hukum* 4, no. 1 (June 30, 2015): 49–85, <https://doi.org/10.33476/ajl.v4i1.28>.

Here are some of the channels for resolving consumer disputes through BPSK, namely as follows:

a. Proceedings by way of Consolidation

The method of resolving disputes through consolidation by BPSK aims to reconcile the parties to the conflict, but in the Consolidation method, the consolidator (passive). Meanwhile, the judgment proceeds are left to the defendant and the plaintiff.

The Tribunal, in resolving consumer disputes with the Conciliation, has the following duties:²⁰

- a. calling consumers and business actors into disputes;
- b. call witnesses and expert witnesses when necessary;
- c. providing a forum for consumers and business actors in dispute;
- d. Answer questions from consumers and business actors, regarding laws and regulations in the field of consumer protection.

The result of the deliberations, which is an agreement between the consumer and the business actor in dispute, is then made in the form of a written agreement signed by the parties to the dispute, then submitted to the Tribunal to make a BPSK Decision to strengthen the agreement.

b. Trial By Way of Mediation

Resolution of consumer disputes through mediation is not much different from consolidation where the parties choose to resolve the dispute on their own or proactively. In mediation, the mediator is active in termination and the BPSK Board plays an active role as mediator and advisor.

Article 30 of the Attorney General's Office Number: 350/Mpp/Kep/12/2001 explains the procedures for resolving disputes through

²⁰ Agnes Grace Aritonang, "Peran Alternatif Penyelesaian Sengketa Di Luar Pengadilan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup," *CREPIDO* 3, no. 1 (July 31, 2021): 1-12, <https://doi.org/10.14710/crepido.3.1.1-12>.

mediation. The Tribunal in resolving consumer disputes by means of Mediation, has the following duties:²¹

- a. calling consumers and business actors into disputes;
- b. call witnesses and expert witnesses when necessary;
- c. providing a forum for consumers and business actors in dispute;
- d. actively reconcile consumers and business actors in dispute;
- e. actively provide advice or recommendations for resolving consumer disputes in accordance with the laws and regulations in the field of consumer protection.

During the proceedings by means of mediation, the parties can submit evidence as a basis for mediation and can be submitted by the Tribunal at the request of the parties to the dispute.

c. Proceedings By Arbitration

In the resolution of consumer disputes through arbitration, the parties select arbitrators from among the BPSK members of the commercial organization component and the consumer who are members of the parliament. The Chairman of BPSK is not authorized to determine who the Chairman of the Panel is in adjudicating consumer disputes.

The chairman of the assembly is obliged to inform consumers and businesses of the remedies used by consumers and businesses in disputes. If in the process of resolving the dispute the parties to the dispute find a bright spot in the dispute, after considering the statements of both parties. The Tribunal shall make a judgment in the form of a peace determination²²

The results of the settlement of consumer disputes by means of consolidation, mediation and arbitrase are made in a written agreement signed by the consumer and the business actor concerned, further corroborated by the

²¹ Muhammad Audi and St. Laksanto Utomo, "Mediasi Perbankan Dalam Penyelesaian Sengketa Antara Nasabah Dan Bank," *SUPREMASI Jurnal Hukum* 2, no. 2 (February 22, 2021): 1–14, <https://doi.org/10.36441/supremasi.v2i2.114>.

²² Sari, "Keunggulan Arbitrase Sebagai Forum Penyelesaian Sengketa Di Luar Pengadilan."

decision of the Tribunal signed by the Chairman and members of the Assembly. The Tribunal shall resolve consumer disputes no later than 21 (twenty-one) working days from when BPSK receives the lawsuit. Consolidated consumer dispute resolution and mediation in making agreements do not contain administrative sanctions. Meanwhile, the results of the settlement of consumer disputes through arbitration are made in the form of a Tribunal award signed by the Chairman and members of the Tribunal.

Conclusion

After the passage of the UUPK, legal protection for consumers as a whole consumers are protected quite representatively. As a form of legal protection to consumers in the UUPK has been mentioned in article 44 of the UUPK as a forum for consumers to be protected their rights, the Non-Governmental Consumer Protection Agency (LPKSM) is formed. Non-governmental consumer protection agencies have the opportunity to play an active role in realizing consumer protection. Meanwhile, the role of BPSK in resolving consumer problems in Indonesia has literally been fulfilled by the existence of the Consumer Protection Law and in resolving consumer disputes outside the court has three channels, namely Consolidation, Mediation and Arbitration and is directly led by the chairman of the Consumer Dispute Resolution Agency (BPSK).

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