

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 in an effort 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 providing protection to 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 and / services to pass through foreign countries. Efforts to provide easy access for consumers in transacting goods and / or services via the *internet* or better known as online shopping through *e-commerce*. By developing public interest and being given convenience in transacting goods and / services through the internet, it provides deeper benefits for consumer needs to be easier, and consumers easily choose

various types of goods that consumers want. But on the other hand, there are problems that lead to disputes related to these transactions that cannot be avoided.

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 in an effort 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 dispute.¹

Trubek pointed out that there are some disputes that are not suitable to be resolved through court proceedings such as family disputes, controversy disputes between neighbors, demands that include a small amount of money, problems that arise in the management of long-term trade relations.²

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 modern 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.

With the proliferation of goods and services traded and exchanged on social networks by unscrupulous merchants, it 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,

¹ Friendly Moray "Settlement of Consumer Disputes Outside the Court According to Law Number 8 of 2009 in the Context of Consumer Protection" *Lex Privatum* Vol. VI/No. 10/Dec/2018 p. 173

² Trubek In Mochamad Munir, *Use of PEngadilan Negeri As An Institution To resolve disputes in the community* (Dissertation of Airlangga University Surabaya), 1997, P. 90.

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.

The main problem of merchants harming consumers is that when consumers feel disadvantaged by merchants, they feel 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.

The establishment of 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 has the main task and function is to resolve if there is a conflict between the user of a product or service and the manufacturer or seller in a non-litigation manner. The community is basically given the convenience to make complaints in resolving consumer protection disputes, namely by the establishment of a Consumer Dispute Resolution Agency which has been formed in each region.³

From some of the definitions above, it appears that conflict is often referred to in sociological studies, while in legal and anthropological studies it focuses 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

Dispute is a universal phenomenon that can be 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.⁵

³ Akhyar, Z., Matnuh, H., & Hardianto. (2015). The Role of the Consumer Dispute Resolution Agency (Bpsk) of Banjarmasin City. *Journal of Civic Education*, 5(10), 773–783.

⁴ Kurniawan, "Comparison of Consumer Dispute Resolution in Indonesia with Countries *Common Law System*" *Journal of Law and Development 43rd Year No.2 April-June 2013*, Pg 250

⁵ Kurniawan, "Consumer Protection Law, *Ked Problemsudukan Dan The Power of BPSK Ruling*", (Unfortunate: Ub Press, 2011), P. 44.

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.⁶ In order 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, how is the role of BPSK in resolving consumer disputes.

Research 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

⁶ Article 47 of Law Number 8 of 1999 concerning Consumer Protection

⁷ Article 49 of Law Number 8 of 1999 concerning Consumer Protection

very wide scope, so it includes personal letters, diaries, books, to official documents issued by the government.⁸⁹

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 with in 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.¹⁰

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.

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: ¹¹

1. the right to comfort, security, and safety in consuming goods and / or services;

⁸ Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Student Library, Yogyakarta, p. 34.

⁹ *Ibid*, p. 24.

¹⁰ Bahder Johan Nasution, 2008. *Legal Science Research Methods*. Mandar Maju, Bandung, p. 92

¹¹ Article 4 of Law Number 9 of 1999 concerning Consumer Protection

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 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:¹²

- a) Read or follow information instructions and procedures for the use or utilization of goods and / or services, for security and safety;

¹² Article 5 of Law Number 9 of 1999 concerning Consumer Protection

- 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 to business actors is given legal protection for small business actors and large business actors. This is done through the application of 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: ¹³

- 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: ¹⁴

- 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;
- 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;

¹³ Article 6 of Law Number 9 of 1999 concerning Consumer Protection

¹⁴ Article 7 of Law Number 9 of 1999 concerning Consumer Protection

- 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.

As a form of consumer protection law in UUPK, Article 44 of UUPK provides a forum for consumers to protect their rights, so a non-governmental consumer protection agency was formed. Non-state consumer protection agencies have the opportunity to play an active role in the implementation of consumer protection.¹⁵

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:¹⁶

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

¹⁵ Article 44 of Law Number 9 of 1999 concerning Consumer Protection

¹⁶ Article 44 Paragraph (3) Law Number 9 of 1999 concerning Consumer Protection

- 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.¹⁷

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.¹⁸

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

¹⁷ Ahmadi Miru, "Principles of Legal Protection for Consumers in Indonesia" Rajawali Pers 2017. Pg 9

¹⁸ Yahya Harahap, "Some Reviews of the Justice System and Dispute Resolution" Citra Aditya Bakti, Bandung, 1997. Pg 240-247

consumer disputes with the availability of 3 (three) ways of dispute resolution, namely by conciliation, mediation, and arbitration.¹⁹

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:²⁰

- 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;
- 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;

¹⁹ Arianto Hulu, A.A. Laksmi Sagung Dewi, Ni Made Sukaryati Karma "The Role of the Consumer Dispute Resolution Agency (Bpsk) in Consumer Dispute Resolution (Case Study: Bpsk Badung Ruling No.01/Ap/Bpsk/IV/2016)" Journal of Legal Preferences Vol. 1, No. 2, 2020. Thing. 30

²⁰ Article 54 of Law Number 9 of 1999 concerning Consumer Protection

- 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.

The settlement of consumer disputes by BPSK is carried out by an Assembly 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), and be assisted by a clerk. Meanwhile, the Registrar is appointed from the members of the BPSK Secretariat.²¹²²²³

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 dispute, but in the Consolidation method, the consolidator (passive). Meanwhile the proceeds of the judgment are left to the defendant and the plaintiff.

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

²¹ Deperindag, *Guidelines for Establishing a Consumer Dispute Resolution Body (BPSK)*. 2002, p. 22.

²² Law Number 8 of 1999 Article 54 paragraph 2

²³ Deperindag, *Op.Cit.*, thing. 23.

- 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. answering 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.²⁴

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 mediation. The Tribunal in resolving consumer disputes by means of Mediation, has the following duties:²⁵

- 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.

²⁴ Kurniawan *Op.Cit*Thing. 256

²⁵ Article 30 Of The Act Number : 350/MPP/Kep/12/2001 Procedure for Resolving Disputes Through Mediation.

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 determination

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 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 the time the lawsuit is received by BPSK. In consolidated consumer dispute resolution and mediation in making agreements does not contain administrative sanctions. Meanwhile, the results of the settlement of consumer disputes through arbitration are made in the form of an 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).

References

Book

- Ahmadi Miru, "Principles of Legal Protection for Consumers in Indonesia" Rajawali Pers 2017.
- Bahder Johan Nasution, 2008. *Legal Science Research Methods*. Mandar Maju, Bandung.
- Deperindag, *Guidelines for the Establishment of a Consumer Dispute Resolution Agency (BPSK)*. 2002.
- Frendly Moray "Settlement of Consumer Disputes Outside the Court According to Law Number 8 of 2009 in the Context of Consumer Protection" *Lex Privatum* Vol. VI/No. 10/Dec/2018
- Kurniawan, "*Consumer Protection Law, Problems of Position and Strength of BPSK Decisions*", (Malang: Ub Press, 2011).
- Mukti Fajar and Yulianto Achmad, 2010, *Dualism of Normative and Empirical Legal Research*, Student Library, Yogyakarta
- Trubek in Mochamad Munir, *The Use of District Courts as Institutions to Resolve Disputes in Society* (Dissertation Universitas Airlangga Surabaya), 1997.
- Yahya Harahap, "Some Reviews of the Justice System and Dispute Resolution" Citra Aditya Bakti, Bandung, 1997.

Scientific Papers

Akhyar, Z., Matnuh, H., & Hardianto. (2015). The Role of the Consumer Dispute Resolution Agency (Bpsk) of Banjarmasin City. *Journal of Civic Education*, 5(10)

Arianto Hulu, A.A. Laksmi Sagung Dewi, Ni Made Sukaryati Karma "The Role of Consumer Dispute Resolution Agency (Bpsk) in Consumer Dispute Resolution (Case Study: Bpsk Badung Ruling No.01/Ap/Bpsk/IV/2016)" *Journal of Legal Preferences* Vol. 1, No. 2, 2020.

Kurniawan, "Comparison of Consumer Dispute Resolution in Indonesia with Common Law System Countries" *Journal of Law and Development* 43rd Year No.2 April-June 2013

Law

Law Number 8 of 1999 Consumer Protection

Attorney General Number: 350/Mpp/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency

Regulation of the Minister of Trade Number 06/Mdag/Per/2017 concerning Consumer Dispute Resolution Agency