

Consumer Dispute Settlements through the Consumer Dispute Settlement Body (BPSK) in Relation to Trade Transactions in Indonesia

Susilowati Suparto^a, Deviana Yunitasari^b, Efa Laela Fakhriah^c,
^{a,b,c}Faculty of Law Universitas Padjadjaran,

Consumer protection law is closely related to the trade and industrial globalisation of a country's economic activities. In this context, consumer protection requires more attention since foreign investment has become a part of Indonesian economic development, which vis-à-vis relates to the world's economic situation. With the growth of Indonesian business, numerous new businessmen are establishing themselves in various market segments. Foreign investors have started to notice Indonesia. Business segments which were underdeveloped prior to the reformation era have now become a new gold mine. However, this causes problems in terms of consumer disputes. Generally, consumer disputes can be settled through court adjudication or alternative settlements based on the parties' own accord, including settlement through the Consumer Dispute Settlement Body (Badan Penyelesaian Sengketa Konsumen, BPSK). In the last resort, the parties have to choose one of the settlement methods applied by BPSK: conciliation, mediation, or arbitration. If conciliation is chosen and it is still impossible to resolve the dispute, it cannot be settled in another way (through mediation or arbitration). In conciliation or mediation methods the dispute settlements are fully in the parties' hands with regard to the form and amount of compensation paid to the losing party. The role of BPSK is limited as a facilitator obligated to advise and reassert the rules contained in Consumer Protection Law. If the parties agree to settle the dispute through arbitration under BPSK, the form and amount of settlement compensation is fully handled by BPSK. In order to be final and binding, BPSK judgements need to request a recognition (fiat execution) by local courts. Furthermore, the judgement itself can be appealed before the district court. Subsequent to achieving BPSK's settlement, to attain legal certainty and to ensure strong enforcement, there should be a regulation concerning the implementation of BPSK settlement. In this way, BPSK would no longer be required to ask for court recognition or even be subject to

appeal before the district court. BPSK would have more influence and binding legal power as a consumer dispute settlement body, which would create greater legal certainty.

Key words: *Dispute settlement, consumer law.*

Introduction

Development and growth of the national economy, especially industrialisation, generates various kinds of goods and services: products. These products can be acquired, owned, used, and consumed by the public (consumers) through transactions such as trading, tenancy, purchase by instalment, etc. Trade transactions are legal relations between businesses and consumers. However, in Consumer Protection Law, relationships between businesses and consumers are not only based on commercial legal relations but can occur through non-commercial legal relations, such as when a consumer receives a product from a business as a donation or gift. Legal protection of consumers' rights and interests can have significant effects that contribute to the development and prosperity of a society in general (Li Shigang & Zhou Guangyan, 2012).

Defining consumer protection (Barbara von Tigerstorm, 2016) and its boundaries is not a simple task (Peter Cartwright, 2001). However, it can be broadly understood as “the extensive accumulation of laws, rules and practices that are ultimately concerned with the protection of citizens in their economic role as consumers”. It focuses on the roles that society's members play as consumers of goods and services.

In a society that is heading towards a modern era, a trade distribution system is complex: the circulation of domestic goods not only involves domestic producers (businesses) but also overseas producers. These conditions create challenges for both consumers and producers, especially for consumers who require more legal protections from producers. As for the producers, consumers are the key part of the object or business goal of their products: to generate maximum profits. Different goals and interests of consumers and businesses have encouraged the emergence of consumer disputes. Issues of consumer disputes are generally based on the unfulfilled rights of consumers in accordance with the agreement stated between businesses and consumers, as well as the existence of a violation of Consumer Protection Law (*UU Perlindungan Konsumen* or UUPK) either intentionally or unintentionally by businesses.

Settlement of consumer disputes under Law No. 8 of 1999 on Consumer Protection (UUPK) can take place through litigation or non-litigation (dispute resolution process outside the court). The UUPK provides an alternative way for consumers to resolve disputes outside of

the courts, through conciliation, mediation and arbitration. According to Gary Goodpaster, as quoted by Susanti Nugroho, not all disputes can be effectively resolved through the mediation process (Nugroho, 2011, p.13).

The Consumer Dispute Settlement Body (BPSK) is an institution formed by the government responsible for handling and resolving consumer disputes between businesses and consumers. However, this institution is not a judicial body; it is not an institution under the judicial authority. The BPSK only handles civil cases. It generally decides the amount of indemnity/loss suffered by the consumer for any business errors/omissions in small amounts. In practice, there is no limit on the value of a lawsuit, hence, BPSK handles consumer lawsuits ranging from small claims to the largest value of lawsuits. Based on the UUPK, the BPSK decision is final and binding. In these terms, final refers to the dispute resolution that has been completed, and binding means that the parties are obliged to act in accordance with the decision.

In practice, there are several cases in which enforcement of the BPSK decision cannot be implemented by the parties. This may be because one of the parties is not satisfied with the verdict since the court does not give a determination of execution (fiat execution), which is contrary to the principles of the Consumer Protection Law. This raises several problems, such as:

1. How is a consumer dispute resolution implemented through the Consumer Dispute Settlement Body?
2. What are the constraints that arise in the execution of the BPSK decision?

Theory

The enactment of Law No. 8 of 1999 on Consumer Protection (hereafter referred to as the UUPK) is the Indonesian Government's effort to protect consumers' interests and to encourage producers to compete under the provision of good-quality products. Under the UUPK, a consumer is "every user of goods and/or services that are available in a society, either for themselves, their families, other people and other living creatures and the goods and/or services are not resalable". From the definition of consumer, it can be concluded that the consumers that are regulated in the UUPK are final consumers, while businesses are producers that manufacture the products. Sellers and consumers are market actors with differing bargaining powers. The consumers invariably possess less bargaining power (SL Rutledge, 2015).

Generally, consumer rights are divided into three basic principles, namely: 1) rights that are intended to prevent consumers from disadvantages, whether personal or involving the

financial loss; 2) rights to obtain goods and services at reasonable prices; and 3) rights to appropriate settlement of disputes (Rutledge, 2015). These three basic principles of consumer rights are absolutely essential and are the foundation for protecting consumers.

The rights and obligations of businesses are regulated in the UUPK Article 6-7. The rights of businesses are to receive payment according to the conditions and exchange rate of traded goods and services as well as to pay at a reasonable price. Moreover, they have the right to obtain legal protection from consumer actions that are not in good faith and the right to rehabilitation of their reputation if it is proven that consumer loss is not caused by its products. Meanwhile, the obligations of businesses include the requirement to act in good faith in their activities, from the designing stage until distribution of the products to consumers. They are also obliged to provide correct, clear and honest information about the condition and guarantee of the products, compensation, indemnity or other compensation agreed by the consumer if the goods and/or services received or used do not accord with the agreement. Businesses are prohibited from producing and trading in goods and services that are not in accordance with the standards required by law, or that do not comply with the label and violate the ethics and/or legal provisions on advertising. Basically, this prohibition focuses on the products. It is designed to ensure that consumers are satisfied in terms of the quality of goods.

According to Article 45 paragraph (1) in conjunction with Article 47-49 of the UUPK, consumer disputes settlement can be conducted in two ways: through the institution in charge of settling disputes between consumers and businesses, or through the courts, within the scope of the general courts. Under the UUPK, BPSK is an institution in charge of settling disputes between consumers and businesses. It is not impossible, however, that the court can resolve disputes between consumers and businesses. This means that the settlement of consumer disputes can be resolved in litigation or through a non-litigation process.

The BPSK is a non-structural institution that is located in districts or municipalities. Currently, there are 64 BPSK that are operational in every province in Indonesia. The duties and functions of the BPSK are to settle consumer disputes outside the court. The BPSK is expected to simplify, accelerate, and guarantee legal certainty for consumers in regard to retaining their rights of businesses action or conduct that is deemed illegitimate. The BPSK is also expected to provide access to information and guarantee equal legal protection for consumers and businesses. The role of the BPSK is the implementation of consumer protection for consumers who have suffered losses or disadvantages. Protection from the BPSK is designed to resolve disputes between consumers and businesses in a proper and fair way, as well as to remove standard clauses in agreements between consumers and businesses that harm consumers.

In regard to its duties and functions, the BPSK has judicial authority in settling disputes and executive authority in conducting monitoring on the inclusion of standard clauses that are made by businesses.

The basic principles of dispute resolution conducted by the BPSK are compilation of Consumer Protection Rules which include:

1. Consumer dispute resolution through the BPSK should be in accordance with the voluntary choice of the parties involved. This means that if the parties have agreed to choose BPSK, at the same time, the parties must choose the resolution process, whether by means of conciliation, mediation, or arbitration.
2. If one resolution process cannot resolve the dispute, for example by conciliation, then, mediation or arbitration cannot be proposed in order to settle the dispute. This means there are no tiers in dispute settlement by BPSK (there is no hierarchy).
3. If the parties have chosen conciliation or mediation for dispute settlement, then, the dispute settlement is entirely in the hands of the relevant parties. This means that the determination of compensation, amount and follow-up on other decisions are based on the agreement of the parties. The BPSK is only a facilitator required to provide feedback, suggestions and to explain the content of the UUPK.
4. If the parties agreed to resolve the dispute by arbitration, the dispute settlement is entirely under the authority of the BPSK that makes the decision.
5. Basically, the dispute settlement in the BPSK is implemented without any assistance from lawyers. This is because the focus of the settlement process is based on deliberation and the fellowship principle because the BPSK expects a win-win solution.
6. The dispute settlement under the BPSK is free of charge, both for consumers and for businesses. It is relatively fast: under 21 days after the process starts.
7. Consumers who can make a complaint about a business are the end-consumers. This includes foreigners who reside in Indonesia.
8. Businesses who may be sued by consumers either by an individual or entity, a legal entity or otherwise, include State-Owned Enterprises and Local-Government-Owned Enterprises, but not government institutions.
9. The BPSK decision is final and binding.

The UUPK ideally seeks a resolution of consumer disputes through the BPSK. Under the UUPK, however, it is possible to bring consumer disputes to court.

From the obtained field data, consumer disputes settlement by the BPSK most commonly takes place through mediation. Problems relating to the consumer disputes settlement process generally occur at the implementation decision stage: often one of the parties requests a cancellation of the decision, arguing that there is an error in deciding the case based on the

evidence that they submitted. Findings show that objections are also filed. The basis for an objection is that the decisions are not in accordance with the wishes of the parties. All these matters must be submitted to the district court. For example, the South Jakarta District Court receives objection applications relating to BPSK–DKI Jakarta arbitration decisions. Moreover, several objections filed in the district court, as sources have said, have been in areas where field data was obtained, i.e., in Bandung, Tasikmalaya, Cirebon, and Padang (Academic Research Report Leadership Grant, 2015).

Methodology

This research uses a normative juridical research method. The research emphasises secondary material, laws, and regulations, especially related to the settlement of consumer disputes through the BPSK. The research uses a descriptive analytical method, which illustrates and describes the settlement of consumer disputes in Indonesia, especially in relation to dispute resolutions performed by the BPSK.

Discussion

Based on a field data analysis, generally consumer disputes are filed by consumers who have a legal relations agreement. This means that the intended consumers are those who acquire or use a product based on an agreement. In fact, according to Article 1 point 2 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/12/2001 on Duties and Authority of Consumer Dispute Settlement Body (BPSK), a consumer is "every user of goods and/or services in a society, either for themselves, their families, other people or other living things, who have no intention to sell". This definition is highly comprehensive and is not concerned with where the goods are obtained; the important thing is that the goods are used and are not resold to the end-consumer.

Claims by consumers against businesses are based on the existence of a consumers and businesses dispute. This claim is what was later called a consumer dispute. Thus, the object of consumer disputes is highly comprehensive and is not just limited to an object of the agreement, but also products that might cause harm to consumers or a consumer disputes an object, if consumers feel their rights have been violated. In practice, the general public does not understand the fact that consumer disputes objects are not limited to the object of agreement.

Consumer disputes can be filed in litigation in district court and can take place through a non-litigation process i.e., outside the court. The UUPK provides a forum for consumers and businesses to resolve a dispute, namely with the BPSK. It should be understood that the



dispute resolution outside the court system can only be taken by consumers as plaintiffs individually, not as a class action or a lawsuit by the government.

The BPSK was established by the government based on the mandate of the law and established in the areas of municipal government and/or the reGENCY. The BPSK is intended to handle and resolve consumers and businesses disputes. Initially, the BPSK only resolved consumer disputes on a small and simple scale. This meant that the government formed the BPSK in order to fulfil distributive justice: because consumer disputes are usually nominal – if they were heard in district court, the court fee would exceed the compensation that would be received by consumers. Therefore, the BPSK settles consumer disputes in a timely manner, meaning that the dispute must be decided within 21 days. The administration and decision-making process is quite simple and can be done without legal advice. The cost charged to consumers is relatively affordable.

The disputes settlement principle is a fast, easy, and economical way that has generally been applied and implemented. In some cases, under the BPSK, consumer disputes are free of charge and are completed faster than dispute settlements in district court.

To cover their operating costs, each BPSK receives assistance from the city/region where the BPSK is located; however, of course each city/region charges differently. This provides an opportunity for members of the BPSK to charge the parties a fee, especially businesses.

The establishment of the BPSK was also intended to ease the workload of the district court. Therefore, the BPSK only handles civil cases, which generally requires compensation for consumers' losses due to any business mistakes or omissions. Hence, basically, in resolving consumer disputes, the BPSK establishes only types and amounts of compensation and determines the actions required to ensure that the case will not happen again.

The means of dispute resolution under the BPSK includes conciliation, mediation, and arbitration. In conciliation, the dispute is resolved by the parties in deliberations and the BPSK specifies matters that the parties have agreed upon. The BPSK decisions only corroborates on what parties have agreed. In mediation, a member of the BPSK is appointed as a mediator. The mediator helps to provide feedback and suggestions to the parties. Accompanied by the parties, the mediator also signs the decision issued by the BPSK. In addition, the arbitration decision is made by three assemblies that are designated by the parties while the chairman of assemblies is among the government representatives.

The BPSK decision is final and binding. "Final" means that the decision is a final verdict of a process and "binding" means that the decision applies to the parties. However, if the parties

are not satisfied with the settlement that has been reached, then the UUPK provides the right to the parties to file a lawsuit to the court.

The fact that the UUPK provisions provides the right for parties to submit a case to the court against the BPSK decision that has a negative impact on the force of law derives from the decision of the BPSK. It gives an impression to consumers, businesses and the public that BPSK decisions do not have the force of law and do not create legal certainty. This is because in the end, the consumer dispute resolution is ultimately resolved in the court. These provisions also give rise to the interpretation that the role of the BPSK in consumer dispute resolutions is merely an exaggeration.

The weakness of the BPSK decisions, which are made outside the court, is that the decision made is not based on the principle of “For The Sake of Justice under the One Almighty God” in mind. Hence, the decisions are deemed to not possess any executorial powers. The principles itself are crucial in regard to making a decision. This is because according to the Law No. 4 of 2004 on Judicial Authority, if a decision does not contain the principle of “For The Sake Of Justice Under The One Almighty God” in the headnote made by any judicial authority, the result judgement becomes null and void. However, there are no regulations related to the BPSK which require that BPSK decisions have to include the principle itself in the headnote.

Non-litigation consumer dispute resolutions through the BPSK, based on the principles adhered to by BPSK, prioritise deliberation, are completed in a timely manner, are relatively economical and simple, and bring legal protection for consumers.

After all, the parties who have chosen the BPSK as a dispute resolution forum, should act in good faith to accept and implement the decision with no attempt to appeal the objection to the court. Additionally, the BPSK should encourage the parties to resolve the dispute by mediation or conciliation because both methods will result in an agreement that arises from the will of the disputing parties. Also, there is a higher chance that their objectives can be better facilitated compared to arbitration since an arbitration decision involves interference from others, even if the arbitrator is neutral. With the existence and decision of the BPSK, adhered to and executed by the parties involved the BPSK must return to the original purpose of the establishment, which aims for dispute settlement for damages and to specify that consumers do not suffer similar losses in the future.

Conclusion

Based on the results of the literature review and the discussion, it can be concluded that:

1. The dispute settlement process performed by the BPSK, is conducted by means of conciliation, mediation, and arbitration and involves various stages (filing a lawsuit, the trial, the decision, and the implementation of the decision). In practice, the BPSK decision is not always final and binding.
2. The obstacles faced in implementing the BPSK decision are due to the fact that the decision is not accompanied by executorial power: to have executorial powers, determination of execution must be requested from the court. Furthermore, the BPSK objections to decisions can be conducted when parties are not satisfied.

Suggestions based on these conclusions are as follows:

1. The parties should base their actions in good faith, in the way of the electoral process until the decision implementation process.
2. The BPSK decision should be granted executorial power, thus, there will be no need to ask for decisions by the court.



REFERENCES

- Cartwright, P. (2001). *Consumer protection and the criminal law: Law theory and policy in the UK*. Cambridge: Cambridge University Press.
- Miru, A. and Yodo, S. (2007). *Hukum Perlindungan Konsumen*, Jakarta, PT Radjagrafindo Persada.
- Nasution, A.Z. (1999). *Hukum Perlindungan Konsumen Suatu Pengantar*, Jakarta, Daya Widya.
- Nugroho, S.A. (2011). *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara*, Jakarta: Prenada Media Group.
- Rutledge, S.L. (2015). *Consumer Protection and Financial Literacy Lessons from Nine Country Studies: Policy Research Working Paper (2010) 10* available at SSRN: <http://ssrn.com/abstract=1619168> accessed on the 3 August 2018
- Samsul, I. (2004). *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*, Jakarta, Universitas Indonesia, Pasca Sarjana.
- Shidarta, (2006). *Hukum Perlindungan Konsumen Indonesia*, Jakarta: PT. Grasindo.
- Shigang, L. I. & Guangyan, Z. (2012). The problems of China's Consumer Protection Law in the legal practice. *International Journal of Business and Social Science*, 3(14).
- Sidabolok, J. (2000). *Hukum Perlindungan Konsumen di Indonesia*, Bandung, PT Citra Aditya.
- Sudaryatmo, (1999). *Hukum & Advokasi Konsumen*, Bandung, PT. Citra Aditya Bakti.
- von Tigerstrom, B. (2016). A Consumer Protection Perspective on Regulation for Healthier Eating. *Dalhousie Law Journal*, 39(2), 471.