



EXISTENCE OF CONSUMER DISPUTE DISPOSAL AGENCY (BPSK) IN CONSUMER DISPUTE SETTLEMENT (STUDY ON LAW NUMBER 8 OF 1999 ABOUT CONSUMER PROTECTION)

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Abstract

The concept of national development is an obligation that the development must be enjoyed by all citizens without exception. As a state of law, Indonesia places the people's sovereignty as the basis for the development of a national development system. National development must be directed towards the realization of a just and prosperous society based on the values of the Pancasila and the 1945 Constitution of the Republic of Indonesia. The national economy is driven by economic actors, both individuals and institutions whose purpose is to seek profits, economic actors conduct economic activities using various forms of business and running a business. The rapid development of the economy has caused many good products and services circulating in the community. The type of research data is secondary data with primary legal material and secondary legal material. The collection technique is library research. While the data analysis technique used is descriptive qualitative. From the results of the research and analysis very helpful in terms of resolving consumer disputes, especially nowadays the tendency of the community (business-producers and consumers) really wants a solution that is fast, simple, inexpensive, and not too bureaucratic. The consumer dispute resolution mechanism has been regulated generally in Article 54 UUPK Number 8 of 1999, and followed up with the issuance of Presidential Decree (Keppres) Number 90 of 2001 concerning Technical Instructions for the Establishment of Consumer Dispute Resolution Board at the Regency / City level, and also followed by with the issuance of Decree of the Minister of Industry and Trade (Kepmenperindag) Number 350 / MPP / Kep / 12/2001 Concerning the Implementation of the Duties and Authorities of the Consumer Dispute Resolution Board.

Keywords : *Consumer, Existence, Protection.*

1. INTRODUCTION

In the life of the nation and state always happens various things and can have positive or negative consequences. In society, there are bound to be disagreements, conflicts of interests, or prolonged and widespread disputes. Disagreements and

conflicting interests can occur only in a limited but possibly prolonged environment. This can happen because there is a conflict of interest between



groups in society. Things like that can also occur in economic activity.¹

The concept of national development is an obligation that the development must be enjoyed by all citizens without exception. As a state of law, Indonesia places the people's sovereignty as the basis for the development of a national development system. National development must be directed towards the realization of a just and prosperous society based on the values of the Pancasila and the 1945 Constitution of the Republic of Indonesia. The national economy is driven by economic actors, both individuals and institutions whose purpose is to seek profits, economic actors conduct economic activities using various forms of business and running a business. The rapid development of the economy has caused many good products and services circulating in the community.²

The growth and development of the goods and services industry on the one hand has a positive impact, among others, the availability of goods and or services in sufficient quantities and the availability of alternative choices for consumers in choosing goods and or service products that are suitable to the needs of the consumer society. The

producers or business people will seek profits as high as possible in accordance with economic principles. In order to achieve the highest profits, producers or business actors must compete among business actors with their own business behavior that can harm consumers. The tight competition can change behavior towards unfair competition because business actors have conflicting interests among business actors. This unhealthy competition, in turn, can harm consumers.³ Such conditions require a legal basis for the government and the community to make efforts to protect and empower consumers through consumer education and education. The legal instruments are intended to create a healthy business climate through the provision of quality goods and or services. This finally encouraged the government to issue Law Number 8 of 1999 concerning Consumer Protection (hereinafter the short writer became UUPK). The fulfillment of the right to a decent life for humanity has also been explicitly mentioned in Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter the short writer becomes the 1945 Constitution) states that each citizen has the right to obtain a decent living for humanity.

Consumer protection aims to increase consumer empowerment in choosing, determining and demanding

¹ Sri Redjeki Hartono, 2017. *Hukum Ekonomi Indonesia*, Bayumedia Publishing, Malang, hlm 131.

² Agustina, Enny. 2019. The Role of Community Empowerment Carried out by Village Government in the Regional Autonomy Era. *Jurnal Unifikasi*. Vol 6 No 1. PP 34-39.

³ Janus Sidabalok, 2014. *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti, Bandung, hlm 2.



their rights as consumers.⁴ Based on that UUPK provides limits and guarantees related to increasing the dignity of consumers including increasing awareness, knowledge, care and independence of consumers to protect themselves, as well as fostering the role of professional business actors and respecting their rights and obligations as business actors. The consequence is that the UUPK states the rights and obligations of business actors and consumers; it aims to provide protection to consumers based on benefits, justice, balance, security, consumer safety and legal certainty.

Consumer protection is something that is related to the globalized business world. This is clearly seen textually in one of the considerations of the UUPK which in its consideration item (c) confirms that the increasingly opening of the national market as a result of economic globalization must continue to guarantee the improvement of people's welfare and certainty over the quality, quantity, and safety of the goods and or services it receives. in the market. The provisions of item (d) emphasize that in order to increase the dignity of consumers, it is necessary to increase awareness, knowledge, care, ability and independence of consumers to protect themselves and to develop the attitude of responsible business actors.⁵

The dispute process occurs because there is no common ground between the parties to the dispute. Potentially, two parties who have different opinions / opinions can move to a dispute situation. In general, people will not express opinions that lead to open conflict. This is caused by the possibility of unpleasant consequences, where a person (personally or as a representative of his group) must face a complicated situation that contains uncertainty so that it can affect his position.⁶

Various ways are taken to resolve disputes between consumers and business actors. In accordance with the local situation and conditions, various alternatives are used by people to reduce tensions between the parties. The technique of resolving disputes is carried out in 2 (two) approaches, the first approach is through a court institution. Weaknesses through the judiciary take a long time and costs are not small. The second approach is through Alternative Dispute Resolution (APS). APS has the advantage of opening up opportunities for parties to reach an agreement based on factors other than money. On the other hand, the process is faster, cheaper and has no nuances of hostility, and the parties are required to really be able to identify the needs of the parties, so that the dispute can be resolved.

⁴ ibid

⁵ Taufiq Effendi, 2013. *Reformasi Birokrasi dan Iklim Investasi*, Konstitusi Press, Jakarta. hlm 43.

⁶ Suyud Margono, 2014. *ADR dan Arbitrase Proses Pelembagaan dan Aspek Hukum*, Ghalia Indonesia, hlm 36.





Consumer disputes must be resolved so as to create a good relationship between business people and consumers, where each party regains their rights. Settlement of legal disputes aims to provide a solution that can guarantee the fulfillment of the rights of both parties to the dispute, so that a sense of justice can be upheld and the law is carried out accordingly. More than that, a good consumer dispute resolution can create and maintain the safe running of business activities. For business actors, the certainty of trying and creating on the part of consumers is the fulfillment of consumer needs well.

Consumer disputes as described above, can be resolved through efforts to Settle Disputes outside the Court, namely through the Consumer Dispute Settlement Agency (hereinafter the short writer becomes BPSK), which is regulated in Article 49 through Article 56 of the UUPK.

Based on the description above, the researcher is interested in revealing in a study that the researcher gave the title: **The Existence of the Consumer Dispute Settlement Agency (BPSK) in Consumer Dispute Resolution (Study of Law Number 8 of 1999 Concerning Consumer Protection).**

2. Problems

Researchers have identified several problems namely; What is the existence of the Consumer Dispute Resolution Agency (BPSK) and the consumer dispute resolution mechanism? What factors are obstacles to the Consumer Dispute

Resolution Board (BPSK) in resolving consumer disputes?

3. Method

Discussion of the problems in this study was conducted using the normative juridical research method. Data and Sources Data in this study used secondary data consisting of: Primary legal materials, namely materials in the form of legislation relating to problems. Secondary legal materials, namely materials that provide an explanation of primary legal materials in the form of scientific works that have relevance to issues to be examined. Tertiary legal materials, namely materials that provide information about primary and secondary legal materials, in the form of legal dictionaries, Indonesian language dictionaries, mass media and the internet.

D. RESULT AND DISCUSSION

1. The Existence of the Consumer Dispute Resolution Agency (BPSK) and the Consumer Dispute Resolution Mechanism

a) The Existence of Consumer Dispute Settlement Bodies In Consumer Dispute Settlement. As is the case with a judicial body, BPSK in carrying out its duties and authorities based on Article 52 of the UUPK, means that the specified duties and authorities are also the role of BPSK in resolving a consumer dispute. But beyond these provisions, sociologically the Role of BPSK, First, is very



helpful for consumers in seeking justice because this institution applies the principle of easy, fast, no-cost proceedings because the costs incurred have already been charged to the Regional Budget and Revenue (APBD) of each regency or city in accordance with UUPK. The procedure for dating is not complicated, it does not use rigid legal arguments.

- b) Second, consumers or plaintiffs can file a verbal or written claim regarding violations of consumer protection, so that the settlement of consumer disputes through BPSK does not need the agreement of both parties to choose BPSK as the dispute resolution forum. The Third Role of BPSK is that if the settlement through BPSK there is an opportunity to choose a semi-closed settlement method whether by conciliation, mediation or arbitration. This is important for the resolution of consumer disputes that contain global business content. From the producer side, business actors certainly do not need to worry about the brand image pollution of the product being disputed by consumers, and consumers are also helped by having bargaining power compared to when negotiating a settlement agreement. Thus, according to the researchers, the role of BPSK is very strategic and very helpful in terms of

resolving consumer disputes, especially nowadays the tendency of the community (business-producers and consumers) really wants a solution that is fast, simple, cheap, and not too bureaucratic.

2. The Consumer Dispute Resolution Mechanism in the Consumer Dispute Resolution Board

Consumer Dispute Resolution Agency is an agency tasked with handling and resolving disputes between producers and business actors with consumers, where BPSK members consist of elements of government, consumers, and business actors. Each element consists of at least 3 (three) people and at most 5 (five) people.

BPSK was established in 2001 with the issuance of Presidential Decree (Keppres) No. 90/2001. Based on the Keppres, BPSK was formed in 10 (ten) second level regions, namely: Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Malang and Makassar. Gradually, BPSK was also established in various cities and districts in Indonesia, and up to 2016, many BPSKs have been established at the district / city level.

Following up on the establishment of BPSK in accordance with Presidential Decree No. 90/2001, a Decree of the Minister of Industry and Trade (Kepmenperindag) No. 350 / MPP / Kep / 12/2001 Concerning the Implementation of the Duties and





Authorities of the Consumer Dispute Settlement Body. In Article 15 Paragraph (1) of this Decree, it states: "Every consumer who is disadvantaged, his proxy or heirs who come to BPSK must file a claim for consumer dispute resolution both in writing and orally through the BPSK secretariat which handles consumer complaints".

Consumer complaints can be made at the BPSK nearest to the consumer's domicile. Each consumer dispute case is resolved by forming an assembly, which is an odd number, consisting of a minimum of 3 (three) people representing all elements, a minimum number of 3 (three) people, and supplemented by the assistance of a clerk.

Furthermore, Article 15 Paragraph (3) SK. Decree of the Minister of Industry and Trade, that the application submitted by the heirs or their proxies is made when: 1) the consumer dies; 2) consumers are sick or elderly, so they cannot file their own complaints both in writing and orally, as evidenced by a doctor's certificate and proof of identity card (KTP); 3) consumers are not yet mature in accordance with applicable laws and regulations; and 4) consumers of foreign citizens.

The next mechanism is as stipulated in Article 16 of the Ministry of Industry and Trade Decree, that the application for the resolution of consumer disputes must contain correctly and completely regarding: 1) the full name and address of the consumer, his heirs or his attorney

accompanied by proof of self; 2) full name and address of the business actor; 3) goods or services complained of; 4) proof of acquisition (receipts, invoices, receipts and other proof documents); 5) information on the place, time and date the goods or services were obtained; 6) witnesses who know the goods or services are obtained; and 7) photos of goods and implementation activities (if any).

Settlement of consumer disputes at BPSK is not tiered. The parties are free to choose the preferred method of dispute resolution, can use Mediation, Conciliation, and Arbitration. After the parties agree on what method to use, the parties must follow it. After consumers and business actors reach an agreement to choose one way of resolving consumer disputes from 3 (three) methods available at BPSK, the BPSK assembly must handle and resolve consumer disputes according to the available options.

If the parties have chosen the Conciliation method or the Mediation method, and the settlement process failed or no agreement was reached regarding the form or amount of compensation, the parties or the BPSK assembly are prohibited from continuing the settlement by way of Conciliation or Arbitration. Subsequent settlement can be done through general justice. BPSK is a non-court consumer dispute resolution agency, so that according to the statutory regulation BPSK has been separated from the scope of the judiciary, but in fact in certain articles in the UUPK, it still provides liaison





with the judiciary, so it cannot be released from the general justice system both civil and criminal.

The examination is carried out as soon as possible, and within 21 (twenty one) working days from the time the lawsuit is filed, the BPSK assembly must give its decision. The decision given by the BPSK assembly in this consumer dispute is final and binding (in *kracht van gewijsde*). This means BPSK is the first and last level of consumer dispute resolution institutions. This is certainly ideal because as an intermediary body (Mediator, Arbitrator, or Conciliator) the decision is expected to contain an element of peace so that it does not need to be refuted by one of the parties in dispute. However, for this decision to be final, it must be taken as objectively as possible in accordance with the law, and satisfying both parties to the dispute.

B. Factors That Become Constraints Consumer Dispute Resolution Agency (BPSK) in Resolving Consumer Disputes

UUPK Number 8 of 1999, the basic material of which is contained in the 1945 Constitution of the Republic of Indonesia, Article 27, Article 28D Paragraphs (1) and Article 33. Norms of consumer protection in the Consumer Protection law system as "laws umbrella law" which is a criterion for measuring the alleged violations of consumer rights, which was originally expected by all parties to be able to provide solutions for the resolution of cases arising as the

implementation of the law, it turns out that in law enforcement or in the implementation they occur inequality and cause confusion for those involved in the implementation in it. This is due to the legal provisions that are not as expected, namely for the resolution of consumer disputes quickly, simply and inexpensively. In addition to the lack of consistency in the articles in the UUPK, there is a conflict between one article and another, as well as a horizontal conflict with other laws and regulations.

The obstacles facing BPSK in resolving consumer disputes are as follows:

1. Constraints Institutional / Institutional;
2. Funding Constraints;
3. Human Resource Constraints;
4. Regulatory Constraints;
5. Lack of Socialization to the community;
6. Lack of Understanding from the Judiciary on Consumer Protection Policies.

1. Institutional / Institutional Constraints

BPSK's institutional / institutional barriers are still a very pressing issue. The existence of BPSK, which is only active in a few cities, is impressive so far that the government (central and regional) has not seriously dealt with the issue of consumer protection. A number





of theoretical problems from the existence of BPSK in resolving consumer disputes have not all been identified. There are several arguments which state that BPSK is not a body that carries out a full judicial function. BPSK resolves disputes through mediation, conciliation, and arbitration, in which all three methods are essentially non-litigation dispute resolution options. Structurally BPSK is under the Ministry of Trade so that in carrying out its duties it still adheres to executive authority, and indirectly opens the possibility of the emergence of obstacles in carrying out its judicial work. The UUPK positions BPSK as a body that has the authority to examine and decide, but is not accompanied by a device to implement its decision. It can be concluded that BPSK is not a body that has a judicial function (quasi-judicial). Therefore, in some areas, business actors who were defeated in a consumer dispute decided by BPSK, filed an objection to the district court and even BPSK in this lawsuit was made a defendant.⁷

2. Funding Obstacles

Operational costs are charged to the Regional Revenue and Expenditure Budget (APBD),

so that the lack of support from the regional government is related to the readiness of the budget allocation in some cities which is still minimal. This greatly affects the performance of BPSK.

3. Human Resource Constraints

BPSK consists of 3 (three) elements, namely elements of government, elements of consumers, and elements of business actors. The representation of this element by law is intended to show people's participation in consumer protection efforts and to show that consumer protection is a shared responsibility between government and society. The division of BPSK members into these three elements is related to the concept of the balance of the parties in dispute and the interests of the government that positions itself as a neutral party in making policy. At least 1 // 3 (one third) of BPSK members must have a legal education background. This is important because BPSK is a body formed by the government whose main task is to carry out the functions of the court. The appointment process of BPSK members raises its own problems, because in reality the appointment of BPSK members emphasizes the representation of consumers, business actors,

⁷ *Ibid*, hlm.210.

and the government, rather than the competence of members in managing and resolving disputes, so there are some BPSK members who do not master the subject matter of the dispute between business actors and consumer. BPSK members from government elements who are recruited from representatives of agencies accustomed to the government bureaucracy system, this can hamper the BPSK process into an independent institution. The culture of superiors and subordinates in the government bureaucracy that is often carried over by BPSK can be a psychological burden internally between BPSK members of the government and BPSK secretariat members, and externally with their respective superiors.⁸ Based on the resources of BPSK members is one of the supporting factors for the optimization of BPSK, because no matter how good the concept of forming an institution, but if it is not supported by competent human resources, the existence of these institutions will be far from expectations.

4. Regulatory Constraints

The UUPK which is expected to be a weapon for justice seekers, in its implementation is apparently still difficult to do

and faces various obstacles. This is due to the legal provisions that are not as expected, namely for the resolution of consumer disputes quickly, simply, at a low cost. The UUPK does not provide sufficient technical guidance or guidance or sufficient explanation, even there is a conflict between one article and another article, a conflict both with the provisions of the program used so far, as well as conflict with other regulations, so legal certainty is difficult to achieve. There are inconsistent regulations, from a procedural point of view there are some weaknesses in the regulation, especially regarding the procedural procedures at BPSK with the standardized forms for proceeding at BPSK not yet standardized.⁹

5. Lack of Socialization to the Community

Level of consumer awareness of their rights due to lack of UUPK socialization. In general, the consumer community does not yet know and understand the existence of UUPK. Another factor that helped determine the low level of consumer legal awareness is the legal culture of Indonesian society. Legal culture is a value that is adopted, which influences the attitudes of the

⁸ *Ibid*, hlm.212.

⁹ *Ibid*, hlm.219.

community members, including the attitude of their actions in the field of law. Indonesian society is a society that is very strong trying to maintain harmony in the relationship between consumers and businesses. This is very influential on attitudes and actions in the legal field.¹⁰ Indonesian people tend to always want to maintain harmony, and avoid conflict and being permissive. This causes the reluctance of consumers to claim their rights when they feel disadvantaged by consuming a product, especially if the value of the loss experienced is of little value. Low consumer confidence in consumer protection, and accompanied by an attitude that is permissive, has an influence on consumer awareness.

6. **Lack of Understanding from the Judiciary on Consumer Protection Policies.**

BPSK has not been fully recognized and anticipated by the judiciary, and does not yet know how BPSK is related to the District Court. Legal remedies submitted to the District Court were interpreted as cancellations referring to Article 70 of Law Number 30 Year 1999 concerning Arbitration and Alternative

Dispute Resolution, some interpreted as a new lawsuit so that the event was processed based on HIR / Rbg provisions. The objection verdict decided by the District Court exceeds the time limit stipulated in Article 58 Paragraph (1) of the UUPK. There is no uniformity in the notification process of BPSK decisions with one another, and the notification process is also different from that adopted by the court which refers to HIR / Rbg. This makes it difficult for the District Court to determine whether business actors and / or consumers are not late in submitting their objections. Likewise with the BPSK decision which has reached the cassation level in the Supreme Court, it turns out that the Supreme Court has not carried out its obligations in accordance with the time limit to give a decision on the case that is presented before it as required in Article 58 Paragraph (3) of the UUPK, the Supreme Court must give a decision in time no later than 30 (thirty) days from receipt of the request for cassation. The UUPK does not explicitly regulate the possibility of a Review (PK) of consumer protection cases, but it is not impossible if the PK's legal remedies are filed by those who object to the final decision,

¹⁰ *Ibid*, hlm.232.

because there are still opportunities for decisions that have permanent legal force, can PK efforts were requested. This resulted in the further struggle of consumers in reaching for their rights through legal channels. With the above obstacles, to fill the need for the UUPK to be carried out, especially aspects related to the vacancy of the event, or conflict with other laws, as long as it involves the role of the judiciary, for a while before the amendment to the law, can be overcome through the issuance of Supreme Court Regulation Number 1 of 2001 concerning the Implementation of Group Representative Lawsuit Procedures and Supreme Court Regulation Number 1 of 2006 concerning Procedures for Filing Objection of BPSK Decisions. The application of the Supreme Court regulations is only a temporary solution to provide the same perception in addressing the shortcomings and emptiness in the procedural law in the UUPK. The Supreme Court Regulations can at least clarify and provide the same view in implementing the consumer dispute resolution process in court.

4. CLOSE

Based on the description in the previous, the researchers draw the following conclusions:

1. That the role of the Consumer Dispute Resolution Agency is very strategic and very helpful in terms of resolving consumer disputes, especially nowadays the tendency of the community (business-producers and consumers) really wants a solution that is fast, simple, inexpensive, and not too bureaucratic. The consumer dispute resolution mechanism has been regulated generally in Article 54 UUPK Number 8 of 1999, and followed up with the issuance of Presidential Decree (Keppres) Number 90 of 2001 concerning Technical Instructions for the Establishment of Consumer Dispute Resolution Board at the Regency / City level, and also followed by with the issuance of Decree of the Minister of Industry and Trade (Kepmenperindag) Number 350 / MPP / Kep / 12/2001 Concerning the Implementation of the Duties and Authorities of the Consumer Dispute Resolution Board.
2. Whereas there are 6 (six) factors which are obstacles to the Consumer Dispute Settlement Agency (BPSK) in resolving consumer disputes, namely: 1. institutional / institutional constraints; 2) funding constraints; 3) human resource



constraints; 4) regulatory constraints; 5) lack of socialization to the community; and 6) lack of understanding from the judiciary on consumer protection policies.

SUGGESTIONS

1. That the role of the Consumer Dispute Settlement Body should be able to act and act even more optimally, if in every local government that has BPSK supports this institution both from moral and material aspects, and from regulatory aspects it should be revised immediately to UUPK No. 8 of 1999 which is currently still valid, so that regulations in the form of Presidential Decrees and Ministerial Decrees can be accommodated into a new law governing consumer protection.
2. Efforts made by the Consumer Dispute Settlement Agency in overcoming these obstacles are: optimizing the human resources of BPSK members by increasing scientific quality, especially regarding consumer protection by attending training and education in order to meet the minimum standards of personal BPSK assembly members, striving for the government in order to issue clear rules regarding budgets and operational costs for BPSK. It is expected that by

optimizing the quality of BPSK members and with an optimal budget so that education for the consumer community is to create intelligent and independent consumers, including providing education to business actors so that in carrying out their business practices, they always prioritize consumer rights and make consumers an asset for business actors.

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