



## Consumer Dispute Resolution By BPSK In Protecting Consumer Rights

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### ABSTRACT

*In Law No. 8 of 1999 on Consumer Protection which aims to protect the rights of consumers. The Consumer Dispute Resolution agency (BPSK) is an alternative dispute resolution institution whose existence is to resolve consumer dispute problems. In Medan City as an urban area with the majority of urban communities, there is a potential for Consumer Dispute problems. BPSK established in the region of Regency/city in Indonesia based on the mandate of Law No. 8 of 1999 on Consumer Protection. Then strengthened by Government Regulation No. 58 of 2001 on guidance and supervision of the implementation of Consumer Protection, Presidential Decree No.38 of 2012 on the establishment of the Dispute Resolution agency. This study aims to identify the position of BPSK in Medan dispute resolution system based on positive law applicable in Indonesia in its efforts to protect the rights of consumers in the city of Medan and its challenges.*

### INTRODUCTION

The rapid development of the economy that occurs in the world, is recognized to have produced different types and variations of goods/services. The Indonesian state is also experiencing developments that cannot escape from these significant changes. This change since the economic crisis occurred in mid-1997, which ultimately led to a total reform of the entire system of governance, politics, law enforcement, economics, and socio-cultural.

On the other hand, the development of technology is so rapid that it can change the map of the world. The world now seems to be smaller and more affordable and does not know the boundaries of the country. Therefore, almost every state development problem in the world tends to have a globalized characteristic that is tied to other countries. Globalization is a necessity that can also be felt by the central government and local governments. Therefore, the central government and local governments need to really change the old pattern

in the implementation of development and more adjust to the development of this globalized environment.

Economic development and development, especially in the field of industry and trade has produced a rapid variety of goods and services needed by the public as consumers. The development of globalization with its free trade supported by technological advances has expanded the space for the flow of goods and services transactions across the boundaries of a country. Then the goods and services offered also vary greatly both made in domestic production and foreign production.

Such conditions on the one hand will provide benefits for consumers, because consumers really need quality goods and services to meet their needs, while business actors and/or service providers are certainly expecting the greatest profit. This condition can result in a very unbalanced position between business actors and service providers and consumers, where consumers will be

the object of business activities by business actors or service providers.

Consumers are always in a weak position compared to producers or business actors. Consumers generally lack complete information about the products they buy. Such a reality is often due to the non-disclosure of the manufacturer regarding the state of the products it offers. Business actors have more knowledge about the information on the state of the products they make. They are generally in a stronger position, both in terms of economy, and of course also in a bargaining position.

According to Article 1 Number (2) of the Consumer Protection Law, hereinafter referred to as UUPK states that "consumer is any person who uses goods and/or services available in the community, both for the benefit of themselves, their families, others, or other living beings and is not traded". Meanwhile, business actors according to Article 1 Number (3) UUPK, what is meant by business actors is "any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or together through an agreement to conduct business activities in various economic fields".

Every company or business actor must have social responsibility, namely the concern and moral commitment of business actors to the interests of society, regardless of the calculation of profit and loss of the company. The company must be responsible for the protection of its consumers.

A very unbalanced condition between consumers and business actors or service providers is a very large potential to cause disputes between consumers and business actors or service providers. For the settlement of disputes between consumers and business actors or service providers may be resolved out of court. At the district or city level, dispute resolution outside the court can be done through the Consumer Dispute Resolution agency hereinafter abbreviated as BPSK in each district or city. The regulation on Consumer Dispute Resolution Agency (BPSK) is regulated in Law Number 8 of 1999 on consumer protection from Article 49 to Article 58 . According to Law No. 8 of 1999 on Consumer Protection Article 49 paragraph 5, it states that "the appointment and dismissal of members of the Consumer Dispute Resolution body is determined by the Minister." (Act No.8 of 2009 on Consumer Protection.

The main task of BPSK is to resolve consumer disputes through out-of-court channels, namely by mediation, arbitration or conciliation. The work

process carried out by BPSK is similar to a court, therefore BPSK is referred to as a quasi-judicial body for handling consumer cases, as is the case with dispute resolution bodies in the field of taxation or labor.

With regard to the above description, researchers feel very interested to learn and explore the existence of BPSK in protecting the rights of consumers. This research on BPSK in protecting the rights of consumers is not intended to support or oppose the function and authority of BPSK, but is intended to position the function and authority of BPSK contextually in the field of consumer protection. To implement Article 49 paragraph (1) of the law- Law No. 8 of 1999 on Consumer Protection.

## **METHOD**

The method used in writing this journal is a type of normative juridical law research supported by empirical research that directly interviews related parties including the community. Research using legal materials both legislation both from the level of legislation to ministerial regulations and policies related to the position of BPSK which then conducted interviews on several parties related to the existence of BPSK in Medan city.

## **RESULTS AND DISCUSSION**

### **A. Position of Consumer Dispute Resolution agency in Medan City**

Settlement of consumer disputes in the development of life in the community can be resolved by an agency or institution that has been legally established by the government under Article 49 paragraph (1) of the law- Law No. 8 of 1999 on consumer protection. The establishment of BPSK in regencies/cities in Indonesia is to answer and resolve the growing problems that occur related to disputes in the field of consumer protection.

Special city of Medan BPSK has been established based on Presidential Decree No. 38 of 2012 on the establishment of Consumer Protection Agency which is the body in charge of handling and resolving disputes between businesses and consumers, namely the settlement of disputes is carried out outside the court.

In carrying out its duties, the position and authority of BPSK South Tangerang city is the most fundamental is to implement dispute resolution through conciliation, mediation, and arbitration, as well as provide consultation and supervision of the protection of the inclusion of the standard clause. Meanwhile, in the District Court in examining and

adjudicating consumer disputes using the code of civil procedure while taking into account the provisions contained in the Basic Law of Justice, Consumer Protection Law, and the Supreme Court law. While the Consumer Dispute Resolution agency uses the Consumer Protection Act and Arbitration Act only.

As for what is not the authority of BPSK, among others, the defendant is not an institution or government agency, both civilian and military, goods or services consumed are legally prohibited from being consumed or traded criminal cases carried out by business actors.

It is common knowledge that the public as consumers often feel aggrieved by the products that have been purchased. Therefore the presence of BPSK is a form of service to the community or consumers to the problems they face. Based on the Consumer Protection Law in Article 52, it is explained that the duties and authorities of BPSK are to carry out the handling and settlement of Consumer Disputes by means of mediation or arbitration as well as reconciliation and supervision of the inclusion of the standard clause.

Then BPSK can also report to the general investigator in the police if there is a violation of the provisions of this law by asking for the help of investigators to present business actors and expert witnesses. So its function as a facilitator or community liaison with YLKI. Sub-district parties who receive pangaduan from consumers to be followed up to BPSK.

With the establishment of BPSK which is the mandate of Article 49 paragraph (1) of Law Number 8 of 1999 on Consumer Protection, the public as consumers can be protected. In the act explained, the government established a Consumer Dispute Resolution agency at the Regional Level II or Regency/city for the settlement of consumer disputes outside the court. The category in dispute resolution handled by BPSK is for individual consumers who are harmed or their heirs. As for disputes for a group of consumers who have the same interests, NGOs or government agencies, dispute resolution is still carried out by the District Court.

For the procedure for complaints made by consumers can be directly or heirs or proxies if the consumer is deceased, sick or immature according to the law or foreign nationals (foreigners) can attach some of the required documents.

The documents include the complaint content form, attaching identity, proof of acquisition of goods, photos of disputed goods/services and witnesses during the sale and purchase transaction. If all

requirements are met, BPSK will follow up on the community complaint by calling the parties to the dispute and limited time 21 days in the settlement.

Cases handled by BPSK in general are in the form of buying and selling goods such as community needs, grocery products, electronics, food and beverage ingredients, housing drugs and others. Tetapi can also receive sengketa in buying and selling rental services parking, transportation, health health and delivery including disputes over non-banking financial transactions or leasing, PLN services, taps and so forth.

Consumer Dispute Resolution through BPSK is a settlement through non-litigation or ADR (alternative Dispute Resolution) which prioritizes win-win solution (mutual benefit) through the specified channels, namely Conciliation, Mediation, and arbitration. BPSK is authorized in all consumer dispute resolution as long as the consumer dispute is not included in the category of goods or services that are legally prohibited from being traded.

#### **B. Consumer Dispute Resolution through BPSK**

The term dispute or conflict is often equated by some circles, but in fact these two terminologies have different characteristics. Because not every conflict can cause a dispute, but on the contrary every dispute is a conflict.

In the world of psychology, there is also a type of psychiatric conflict which is certainly not a legal dispute. This departs from the definition of conflict which is defined as the simultaneous occurrence of two or more influs or antagonistic motives. An actual conflict usually precipitates a mental crisis, and can be distinguished from a root conflict that arises from childhood. Similarly, in the field of sociology known group Conflict (group conflict) and others. In the opinion of Laura Nader and Harry Tood distinguish the notion of conflict (dispute) with dispute (dispute), even conflict (dispute) itself can be distinguished between pre-conflict (pre-dispute) and conflict (dispute). Nader and Todd give an understanding of the conflict is a dispute that only involves the two parties, while the dispute is a dispute between two or more parties that is already open in nature and whose resolution involves a third party.

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

Dispute is a universal phenomenon that can be found in every society with all backgrounds. How the dispute is resolved, there is no uniform form, which means that the parties to the dispute can take various options for action with the aim that the dispute can be resolved.

According to Cristoper W. Moore, distinguish the dispute into 2 (two), namely as follows: dispute or unrealistic conflict (unrealistic conflict), which is when the parties act as if they are in conflict, although there are no objective conditions for the continuation of the conflict and realistic conflict (realictic conflict) is actually derived from conflicts of interest.

In UUPK No. 8 of 1999, it states that consumer disputes are part of the state administration institution that has the task to resolve disputes between business actors and consumers, in this case BPSK. Article 1 point 11 of the UUPK indicates that what is meant by "consumer dispute" is a dispute between business actors and consumers.

In accordance with Article 19 paragraph (1) of the Consumer Protection Law, Business actors are responsible for providing compensation for damage, pollution and/or consumer losses due to consuming goods and/or services produced or traded. Such indemnification must be executed within 7 (seven) days after the transaction. This is as stipulated in Article 19 paragraph (2) of the Consumer Protection Law that the compensation is carried out within a period of 7 (seven) days it turns out that business actors provide compensation then there will be no consumer dispute. However, on the contrary, if within 7 (seven) days the business actor does not provide compensation, then there will be a consumer dispute. Consumers who are harmed will make legal efforts by suing business actors.

Romy Hanitijo defines dispute as "a situation in which two or more parties fight for their own goals that cannot be united and in which each party tries to convince the other of the correctness of their respective goals". Article 1 Number 8 decree of the Minister of Industry and trade of the Republic of Indonesia number 350 / MPP / Kep / 12 / 2001 provides a definition of consumer dispute is a dispute between businesses and consumers who demand compensation for damage, pollution and/or who suffer losses due to consuming goods and/or utilizing services.

Out of court. This dispute resolution is as contained in Article 23 of the Consumer Protection Law which states that business actors who refuse and/or do not respond and/or do not meet the compensation for consumer provisions as referred to in Article 19 paragraph (1), Paragraph (2), and Paragraph (4)

can be sued through the Consumer Dispute Resolution agency. The settlement of Consumer Disputes is also provided for in Article 45 .

Based on the two articles mentioned above, namely Article 23 and Article 45, the way to resolve consumer disputes can be done through the court or out of court.

BPSK in Indonesia was first inaugurated in 2001, namely by decree of the president of the Republic of Indonesia No. 90 of 2001 on the establishment of BPSK in the Government of Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Malang and Makassar. Later in the same year (2001), the government through the Minister of Industry and Trade issued Ministerial Decree No. 350/MPP/Kep/12/2001 on the implementation of the duties and powers of the Consumer Dispute Resolution agency (BPSK).

The settlement of Consumer Disputes by BPSK is carried out by the Assembly formed based on the decision of the chairman of BPSK and assisted by the Registrar. The Assembly must be an odd number and at least consist of 3 (three) members of BPSK representing elements of the government (as chairman) and elements of consumers and business actors as members. While the Registrar is appointed from members of the secretariat BPSK.

If the application is accepted, the chairman of BPSK must summon the business actor in writing accompanied by a copy of the application from the Consumer, no later than 3 (three) working days since the consumer dispute settlement application is received correctly and completely. For the purpose of summoning the business actor, a summons is made containing: Day, date, time and place of trial as well as the obligation of the business actor to provide a response letter to the settlement of consumer disputes and submitted no later than the 7th (seventh) day starting from the receipt of the application by BPSK.

Article 52 paragraph (4) UUPK jo. Article 26 to Article 36 SK Menperindag number 350/MPP / Kep / 12 / 2001, explained that the handling and settlement of consumer disputes through the Consumer Dispute Resolution Agency (BPSK) is done in 3 (three) ways, namely Conciliation, Mediation and Arbitration.

In carrying out its functions, BPSK Medan City cannot be separated from related institutions that have been regulated in existing legislation. Among the related institutions are :

- 1) The president as the highest executive In accordance with the mandate of Law No. 8 of 1999 on Consumer Protection, the president played an important role in

realizing BPSK to remote parts of the archipelago. The president may issue a Presidential Regulation from the UUPK and then the president also has the authority to establish a dispute resolution institution and consumer protection institution.

- 2) The Supreme Court The Supreme Court as the holder of judicial power in addition to the Constitutional Court has an important role in legitimizing a judicial decision either through litigation (court) or non-litigation as well as BPSK. Therefore, all decisions either by mediation, conciliation or arbitration will come to the Supreme Court.
- 3) Ministry of trade institutions have no less important role next is the Ministry of trade. Because historically and institutionally, BPSK comes from the Ministry of trade in carrying out its functions in the community. The technical regulations are therefore derived from this institution.
- 4) BPKN (National Consumer Protection Agency)BPSK hierarchically leads to BPKN (National Consumer Protection Agency) whose function is to protect consumers as weak parties.
- 5) Local Government Local Government both provincial and District/City has its own important role. Because the eksesitensi of the judiciary is related to the budgeting of the local budget.
- 6) Non-governmental organizations Consumer Protection non-governmental organizations related to Consumer Protection have an important role in educating and advocating for the community as a range of consumers against the injustice of producers.
- 7) Law Enforcement At the level of law enforcement both in the police, prosecutors and judges also have an important role, because there are still many cases that should enter the realm of BPSK or can be enough with BPSK faster, but not done because of ignorance.

This Saa BPSK Medan city is still not familiar as an agency tasked to protect consumers. Even at the District Court level, when one party filed an objection, many district courts questioned the authority and duties of BPSK Medan city. Likewise, if BPSK Medan Selatan City reports a case containing criminal elements to the police.

Therefore, it is necessary to conduct more intensive communication and coordination with the judiciary and other law enforcement agencies. It is intended that the judiciary and other law enforcement

agencies can better understand the position and authority of BPSK Medan and BPSK Medan Selatan are expected to better embrace and cooperate with the judiciary and other law enforcement agencies in order to jointly protect the rights of the community as consumers.

## CONCLUSION

BPSK was established under Law No. 8 of 1999 on Consumer Protection. The Consumer Protection Law in Article 47 explains that out-of-court dispute resolution is held to reach an agreement on the form and amount of compensation and/or on certain actions to ensure that there will be no reoccurrence or recurrence of losses suffered by consumers. To complement this, the government established a Consumer Dispute Resolution agency at the regional level II Regency/municipality.

The presence of BPSK as one of the alternative Consumer Dispute Resolution institutions is felt to be very beneficial for the people of South Tangerang. But on the other hand experiencing various obstacles or barriers in carrying out its activities. This is common to BPSK throughout Indonesia.

For BPSK Medan City, the main obstacle faced by in carrying out its tasks is the human resources factor of BPSK Medan City members, although based on the level of formal education all members of BPSK Medan city can be said to have good quality. However, technically and functionally BPSK Medan members have not been socialized properly, so there is always a debate among members in decision making.

In addition, the lack of understanding of the existence of the judiciary and the authority of BPSK South Tangerang city that makes BPSK ineffective in performing their duties and resulting in a lack of trust from the community.

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