

**EKSISTENSI BADAN PENYELESAIAN SENGKETA KONSUMEN DALAM  
PENYELESAIAN KASUS SENGKETA KONSUMEN DI INDONESIA*****THE EXISTENCE OF CONSUMER DISPUTE RESOLUTION BODIES IN RESOLVING  
CONSUMER DISPUTE CASES IN INDONESIA*****Rahayu Hartini<sup>1</sup>, Muhammad Rozan Dwi Putra<sup>2</sup>**

<sup>1</sup> Universitas Muhammadiyah Malang  
Jl. Raya Tlogomas No.246, Babatan, Tegalondo, Kec. Lowokwaru, Kota Malang, 65144, Jawa Timur,  
Indonesia  
Tel./Fax: +62-341-464318 E-mail: [hartini@umm.ac.id](mailto:hartini@umm.ac.id)

<sup>2</sup> Universitas Muhammadiyah Malang  
Jl. Raya Tlogomas No.246, Babatan, Tegalondo, Kec. Lowokwaru, Kota Malang, 65144, Jawa Timur,  
Indonesia  
Tel./Fax: +62-341-464318 E-mail: [muhammadrozandwiputra20@gmail.com](mailto:muhammadrozandwiputra20@gmail.com)

*Submitted: May 01, 2024; Reviewed: June 11, 2024; Accepted: June 13, 2024*

***ABSTRACT***

*Consumer dispute resolution can be done through litigation or non-litigation mechanisms. Alternative dispute resolution processes, including through conciliation, mediation and arbitration, are carried out by the Consumer Dispute Resolution Agency. Non-litigation dispute resolution is one of the most popular methods because it can resolve cases faster and better. However, the large number of dispute resolutions through BPSK does not necessarily make its implementation without problems. There are at least 3 (three) obstacles that cause the existence of BPSK to not be optimal, namely disharmonization of regulations, minimal access to BPSK, and minimal public knowledge regarding the importance of protecting rights as consumers. So, to increase the existence of BPSK as a consumer dispute resolution body, the author considers that there needs to be several improvements in terms of legal substance (legal regulations) so that it does not overlap with judicial bodies and can provide legal certainty, then in terms of legal structure there needs to be equality in the provision of BPSK offices. down to districts/cities to facilitate community access, furthermore in terms of legal culture where there is a need to provide more understanding to the community regarding the importance of awareness to protect their rights as consumers.*

**Keywords:** *Non Litigation; Existence; Constraints; BPSK*

**INTRODUCTION**

Indonesia is the dominant economy in Southeast Asia and a major player in the global market. Indonesia, as a leading economic power in Southeast Asia and a large global market, naturally experiences many economic interactions, both domestic

and international. With so many economic relationships involving producers and consumers in Indonesia, there are bound to be many problems. One of the biggest problems in economic relations is disputes between producers and consumers.

With so many economic relations that then cause various problems, especially for consumers. So, it is deemed necessary to have special protection for the subject. In addition, Law No. 8/1999, sometimes referred to as the Consumer Protection Law, and a number of additional laws and regulations are responsible for protecting the rights of consumers.

Given the existence of laws protecting consumer rights, this is in line with UN resolution no. 39/248 which outlines Guidelines for Customer Protection. Article 3 of the Consumer Protection Law provides an overview of the objectives to be achieved by consumer protection, including preventing consumers from losing money in utilising a good or service. This means that the government is serious in taking preventive and repressive measures against consumer dispute cases. "In accordance with Article 23 of the Consumer Protection Law, in the event that the business actor does not respond or compensate for the requirements made by the consumer", it can lead to consumer disputes and legal action can be taken against it. Since there is no restriction in this law on the definition of a consumer dispute, it can be said that the definition of a consumer dispute is: "disputes that occur between consumers and businesses that are deemed to have violated consumer rights". Therefore, consumer conflicts can be categorised as "disputes relating to violations of consumer rights". The breadth of law covers all aspects, including civil, criminal, and constitutional. Thus, the term "consumer transaction dispute" is not used because its scope is more limited, which only includes elements of civil law.

In Indonesia, there are two channels available to the public to resolve consumer complaints. There are two options available: the litigation route, which involves going through the legal system, and the non-litigation approach, which involves resolving issues outside of court. The GCPL and the Civil Procedure Law regulate the resolution of consumer disputes through the courts, while the GCPL regulates the

non-litigation route. In resolving consumer disputes, the conflict between the Consumer Protection Law and the Civil Procedure Law does not provide sufficient protection for consumers. This is contrary to the purpose of the GCPL. The legal certainty that aims to protect consumers is only contained in the regulations as stated in Article 1 of GCPL. UUPK, which is intended as an umbrella act that regulates the interaction between consumers and businesses, is like a toothless tiger. The law was enacted to create equality, encourage favourable outcomes and ensure legal certainty.

In this paper, BPSK in Indonesia conducts investigations, particularly in relation to circumstances involving consumer disputes. This paper will also discuss the obstacles that hinder the community and BPSK in resolving these conflicts effectively. customers using alternative dispute resolution methods. This paper reviews BPSK, which is the main institution in Indonesia specialising in consumer dispute resolution. The article aims to offer strategies to improve the effectiveness of BPSK in Indonesia in resolving customer disputes.

## ANALISIS

### **The Role and Function of the Consumer Dispute Resolution Body (BPSK)"**

In accordance with Article 1 point 11 of Law Number 8 Year 1999 (Consumer Protection Law), BPSK is responsible for the management and settlement of complaints between business actors and their customers. In order to handle and resolve customer problems, BPSK forms a committee with at least three members and an odd number of members. The committee is supported by a clerk. In addition, the governor also took the initiative to form BPSK in accordance with the provincial working area covering government agencies, customers, and business actors. In accordance with the provisions of Article 4 paragraph (1) and Article 10 paragraph (1), Regulation of the Minister of Trade No. 72/2020 mandates the establishment of a Consumer Dispute Settlement Body.

The authority of the Consumer Dispute Settlement Body is explained in Article 52 of Law No. 8/1999, which is the legislation relating to consumer protection. The article reads:

- a. Mediate, arbitrate, or resolve consumer concerns;
- b. Offer advisory services for consumer protection;
- c. Supervise the inclusion of standard provisions.
- d. Report offences to the public investigator;
- e. Receive consumer complaints;
- f. Research and review consumer protection disputes.
- g. summoning businesses accused of violating consumer protection laws;
- h. summoning witnesses, including expert witnesses and anyone who has knowledge of the violation;
- i. In the event that the individual is unwilling to fulfil the summons of the consumer dispute resolution body, it is advisable to seek the assistance of investigators.
- j. Review and assess the status of the letters.
- k. decision-making and determination of whether the consumer has suffered loss or not;
- l. notification to business actors who violate consumer protection;
- m. and the imposition of administrative sanctions against business actors who violate the provisions of this Law.

BPSK's consumer dispute resolution mechanism is not tiered. The parties may choose mediation, consolidation, or arbitration. When the parties reach a consensus on the chosen approach, they are obliged to adhere to it. The panel's responsibility is to find a solution to the problem if consumers and businesses reach an agreement to use one of the three consumer dispute resolution techniques prescribed by BPSK.

Both Christopher W. Moor and Desriza Ratman emphasise that mediation is a process that involves the participation of a neutral

third party mutually agreed upon by both parties. These third parties must be fair, impartial, and have no decision-making authority. Instead, they help the disputing parties to resolve the issue amicably. Conciliation is a way of resolving consumer problems without involving the courts. BPSK helps the conflicting parties to communicate and leaves the final choice to them. When submitting a consumer dispute for conciliation, the Panel is responsible for several tasks. This includes summoning consumers and relevant corporate actors, witnesses, and expert witnesses if necessary, as well as providing a place where consumers and corporate actors can discuss and submit responses to laws and regulations relating to consumer protection. The last alternative is arbitration. "Arbitration is an alternative to going to court to resolve civil disputes. An arbitration agreement is a written agreement made between the parties to the dispute. The third paragraph of Article 1 defines an arbitration agreement as a clause set out in a written agreement signed by the parties before a dispute occurs, or a separate arbitration agreement made after a dispute has arisen".

BPSK is still utilised by a large number of customers for conflict resolution purposes due to its clarity, effectiveness, and efficiency. Due to its faster resolution duration, BPSK is favoured over the district court in consumer dispute resolution. Specifically, consumer disputes must be resolved within 21 working days. Similarly, commercial entities are hesitant to opt for litigation as a way to resolve customer issues and prefer to resolve such disputes through consensus or family deliberation, which is a superior approach. If an agreement or amicable settlement cannot be reached, then the business entity will resort to resolving the conflict with the customer through the district court as the last alternative due to its higher degree of certainty.

### **Obstacles to Dispute Resolution Through the Consumer Dispute Resolution Body**

BPSK is a common way to resolve

customer complaints, but this is still difficult to do. Some of the obstacles both from BPSK and from the community that we summarise are:

1. Disharmonisation of regulations;
2. Lack of access to BPSK;
3. Lack of public knowledge regarding the importance of protecting their rights as consumers.

So far, there are at least three factors that hinder dispute resolution through BPSK. The main problem relates to regulatory inconsistency. Article 54 paragraph (3) of GCPL stipulates the BPSK Decision.

Disputes between consumers resolved through conciliation, mediation, or arbitration are conclusive and legally binding. When an issue is resolved in a "final" manner, this signifies that the dispute has been resolved. On the other hand, the term "binding" implies "compelling and as something that must be carried out by the party obliged to it". The notion of *res judicata pro veritate habetur* states that "a decision that is no longer possible to make legal remedies, is declared as a decision that has definite legal force". To adhere to this concept, the BPSK judgement must be considered valid. If this article is linked to paragraph two of Article 56 of GCPL, then the parties have the ability to file an "objection" to the District Court within fourteen working days of the BPSK decision. Because it is not in accordance with the BPSK decision which is final and enforceable, this provision is contradictory and ineffective. Therefore, the availability of BPSK is the issue. Based on the respective statistics, only 41 out of 514 regencies and cities in Indonesia have BPSK. Among the many challenges that stand in the way of the establishment of BPSK in Kabupaten/Kota, there are also a number of other obstacles:

1. Dinas Perindustrian dan Perdagangan (Disperindag) tidak mempunyai kewenangan membentuk BPSK Kabupaten dan Kota.
2. Penganggaran BPSK tidak diusulkan dalam rencana Pembiayaan Belanja Daerah yang sedang diusulkan oleh

Inisiatif Kabupaten dan Kota untuk membentuk badan tersebut.

3. Kurangnya pengetahuan hukum Pemerintah Daerah mengenai perlunya BPSK kabupaten kota untuk mengatasi permasalahan konsumen.
4. Kegagalan pemerintah dalam memberikan perlindungan yang memadai terhadap hak dan kepentingan konsumen, sehingga mengakibatkan kurangnya pemahaman konsumen mengenai pentingnya BPSK.<sup>1</sup>

Based on empirical evidence, consumer protection has not run effectively as outlined in the regulations, the number of cases in the community shows this. Some influencing factors include:

1. The relatively low level of education in the community

The low standard of education of people in developing countries has the following impacts:

- a. Misunderstanding of consumer protection laws;
- b. Unawareness of their rights as customers, which must be respected by businesses and protected by legal provisions;
- c. Inadequate product knowledge when purchasing;
- d. Uncertainty regarding the reporting of hazardous substances in products.
- e. Do not ignore hazardous food or beverages and consider it a disaster.

2. Bureaucratic law enforcement system

Regarding point 1, few people are highly educated and aware of consumer protection laws. On the other hand, people may be reluctant to report situations involving potentially hazardous materials:

- a. The whistleblower will struggle and must collect evidence.
- b. Because they often have to provide testimony or explanations, the

<sup>1</sup> Billy Kalangi. (2015). "Efektivitas Undang-undang Nomor 8 Tahun 1999 Terhadap Pembentukan Badan Penyelesaian Sengketa Konsumen (BPSK) di Indonesia". *Lex Et Societatis*, 3(4): 51.

complainant will be inconvenienced.

## CONCLUSION

From the above description, the author will draw some conclusions. One aspect that needs to be considered is "the role and function of BPSK which is still very important and necessary to provide an alternative method in handling consumer problems. This body remains the main choice of the community in resolving these conflicts. Furthermore, BPSK still has a strong existence as a non-litigation dispute resolution body. However, it does need some improvements starting in terms of legal substance (legal regulations) so that it does not overlap with the judicial body and can provide legal certainty, then in legal structure there needs to be an equal distribution in the provision of BPSK offices to districts / cities to facilitate community access, further in legal culture which needs to provide more understanding to the community regarding the importance of awareness to protect rights as consumers.

## BIBLIOGRAFI

### BUKU

- Abdul Halim Barkatullah. (2008). *"Hukum Perlindungan Konsumen Kajian Teoritis dan Perkembangan Pemikiran"*, Cetakan 1. Bandung: Nusamedia.
- Desriza Ratman. (2012). *"Mediasi Non-Litigasi Terhadap Sengkata Medik dengan Konsep Win Win Solition"*. Jakarta. Elex Media Komputindo.
- Maryanto. (2019). *"Prosedur Penyelesaian Sengketa Konsumen Di BPSK"*. Lampung. Unissula Press.
- Susanti Adi Nugroho. (2011). *"Proses Penyelesaian Sengketa Konsumen ditinjau dari hukum Acara Serta Kendala Implementasinya"*. Jakarta. Kencana Prenada Group.
- Shidarta, (2006). *"Hukum Perlindungan Konsumen Indonesia"*, Cetakan 3. Jakarta: Grasindo.

### JURNAL

- Billy Kalangi. (2015). "Efektivitas Undang-undang Nomor 8 Tahun 1999 Terhadap Pembentukan Badan Penyelesaian Sengketa Konsumen (BPSK) di Indonesia". *Lex Et Societatis*, 3(4): 49-57.
- Chanda Adi Gunawan, dkk. (2023). "Perlindungan Hukum Terhadap Konsumen dalam Perspektif Kesadaran Hukum Masyarakat". *Jurnal Konstruksi Hukum*, 4(1): 13-19.
- Gusti Ayu Sandrina, dkk. (2023). "Perlindungan Hukum Bagi Konsumen Terhadap Ketidaksesuaian Kualitas Barang Yang Dibeli Pada Aplikasi Belanja Tiktok Shop". *Jurnal Kertha Semaya*, 11(3): 487-497.
- Halida Zia, dkk. (2022). "Eksistensi Badan Penyelesaian Sengketa Konsumen Dalam Menyelesaikan Sengketa Konsumen di Indonesia". *Datin Law Jurnal*, 3(1): 79-91.
- Halimah Humayrah Tuanaya. (2021). *"Prinsip Tanggungjawab Produk (Product Liability) Menurut Undang-undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen"*. *Pamulang Law Review*, 4(2): 147-156.
- Kadek Purwa Sastra Diyatmika, dkk. (2020). "Pertanggungjawaban dan Penyelesaian Sengketa Konsumen Berkaitan Dengan Perdagangan Parsel". *Jurnal Analogi Hukum*, 2(3): 393-398.
- Muskibah. (2018). "Arbitrase Sebagai Alternatif Penyelesaian Sengketa". *Jurnal Komunikasi Hukum*, 4(2): 139-149.
- Nurul Fibrianti. (2015). "Perlindungan Konsumen dalam Penyelesaian Sengketa Konsumen Melalui Jalur Litigasi". *Jurnal Hukum Acara Perdata*, 1(1): 111-126.
- Riris Nisantika, dkk. (2021). "Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)". *Jurnal Locus Delicti*, 2(1): 49-59.
- Sugandi Ishak. (2016). "Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK) Dan Lembaga Alternatif Penyelesaian Sengketa Di Sektor Jasa Keuangan (LAPS-SJK)". *Era Hukum-Jurnal Ilmiah Ilmu Hukum*, 14(2): 179-204.