

Construction of the Authority of the Consumer Dispute Settlement Agency in Indonesia

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ABSTRACT: According to Article 49 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, the Government forms a Consumer Dispute Settlement Agency (BPSK) in each Regency / City for the resolution of disputes between business actors and consumers outside the court. BPSK is a very strategic institution in consumer protection. However, there are a number of weaknesses in regulating the authority of the Consumer Dispute Resolution Board that do not reflect the value of justice in society. For example, regarding the concept of consumer dispute resolution by choice; The BPSK's decisions are not final and binding. In addition, there were also a number of obstacles and problems related to the implementation of the authority of the BPSK, such as: there are still BPSK who accept disputes outside their relative authority; Implementation of the concept of arbitration at BPSK that is not in accordance with the concept of arbitration according to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; Cancellation of almost all BPSK arbitration awards by the Supreme Cour. This condition will certainly not make BPSK optimal in carrying out its role and function in the consumer protection system in Indonesia.

KEYWORDS: Authority, Consumer Dispute Settlement Agency

I. INTRODUCTION

1.1. Background

Law Number 8 of 1999 concerning Consumer Protection is an umbrella law for all regulations relating to consumer protection in Indonesia. According to Article 49 paragraph (1) of Law Number 8 of 1999, the Government forms a Consumer Dispute Settlement Agency (BPSK) in each Regency / City for the settlement of disputes between business actors and consumers outside the court. The basic concept promoted by BPSK is how to make consumer disputes which are usually of little value, can be resolved through peace between the parties with the principle of a win-win solution and a number of advantages compared to having to take a dispute resolution through court. BPSK is institutionally under the auspices of the Ministry of Trade of the Republic of Indonesia.

Alternative consumer dispute settlement as implemented by BPSK is a model of dispute settlement that is developing around the world. This is because alternative dispute settlement has a number of advantages over litigation, such as: quick dispute resolution, low cost, informal procedures, dispute resolution with the concept of win-win solution.

BPSK is one of the strategic institution in consumer protection. However, there are a number of weaknesses in regulating the authority of BPSK that do not reflect the value of justice in society. For example, regarding the concept of consumer dispute resolution by choice (not tiered); and the character of BPSK's decisions are not final and binding.

In addition, there were also a number of obstacles and problems related to the implementation of the authority of BPSK, such as: there are still BPSK who accept disputes outside their relative authority; Implementation of the arbitration concept at BPSK that is not in accordance with the concept of arbitration according to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution; The low compliance of business actors with BPSK calls; Relatively short time frame for dispute resolution; Cancellation of almost all BPSK arbitration decisions by the Supreme Court at the cassation stage, etc.

Such conditions will certainly make BPSK not optimal in carrying out its role and function in the consumer protection system in Indonesia and as the frontline to bridge the dispute resolution by promoting the principle of peace. Therefore, the author is interested in raising this issue in a study entitled "Construction of the Authority of the Consumer Dispute Settlement Agency in Indonesia".

1.2. Formulation of the Problem

Based on this background, several problems can be formulated as follows: (1) How is the arrangement of the authority of the Consumer Dispute Settlement Agency in Indonesia?; (2) How is implementation of the authority of the Consumer Dispute Settlement Agency in Indonesia?

II. MATERIAL AND METHODS

2.1. Type of Research

Based on the focus of research, this type of research is normative legal research, namely research that places the law as a norm system, namely regarding the principles, norms, rules of legislation, court decisions, agreements and doctrines (Fajar and Achmad, 2010: 34). Meanwhile, according to the nature and purpose, this research is a descriptive legal study (descriptive legal study), which is a legal research that is explained and aims to obtain a complete description (description) of the legal situation prevailing in a certain place and at a certain time, or regarding juridical symptoms existing, or certain legal events that occur in society (Muhammad, 2004: 49).

2.2. Research Materials or Data

Source of Data used in this study consisted of primary data and secondary data. Secondary data is used as the main data, while secondary data is used as supporting data. Primary data is data obtained directly from field research by conducting interviews, observations, and documentation techniques (Surakhman, 1990: 163). While secondary data is data obtained based on literature studies and document studies (Soekanto and Sri Mamudji, 1986: 11). Secondary data consists of primary, secondary and tertiary legal materials. The primary legal material in research such as: Law Number 8 of 1999, Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Minister of Trade Regulation No. 06/M-DAG/PER/2017 concerning Consumer Dispute Resolution Agency, Decision of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 concerning the Implementation of BPSK's Duties and Authorities, etc.

2.3. Technique of Data Collection

Technique of data collection in this research were carried out by conducting library studies, document studies, and interviews.

2.4. Research Data Analysis

All materials obtained and collected will be analyzed using qualitative analysis, namely by describing or describing existing theories with material obtained from interviews, data, and literature studies from various

sources, preceded by coding and editing data, then interpreting to give meaning to the meaning analysis, explaining patterns or categories looking for relationships between various concepts (Nasution, 2003: 126).

III. RESULT

3.1. Arrangement of Authority of the Consumer Dispute Resolution Agency in Indonesia

Regulations about BPSK are spread over a number of legal grounds. Specifically in the Law Number 8 of 1999, the general regulation starts from Article 49 to Article 58 of the Law Number 8 of 1999. The legal basis for BPSK's general authority is illustrated in the provisions of Article 49 paragraph (1) of the Law Number 8 of 1999, which reads: "The Government established the Consumer Dispute Settlement Body in Level II Regions to settle consumer disputes outside the court." That is, the Law Number 8 of 1999 explicitly gives general authority to BPSK to resolve consumer disputes outside the court. In addition, if we examine the provisions of Article 52 of the Law Number 8 of 1999 regarding the duties and authority of BPSK above, it is also illustrated that the provision of letter (a) of Article 52 of the Law Number 8 of 1999 also provides confirmation of BPSK's general authority, in which the provisions and duties of BPSK are stated: "Carry out the settlement of consumer disputes, by means of mediation or arbitration or conciliation." Furthermore, BPSK's general authority is elaborated or reduced in a number of tasks and authorities contained in Article 52 of the Law Number 8 of 1999 starting from letter (b) to letter (m).

The author also observes that not all the duties and authority of BPSK described in the provisions of Article 52 of the Law Number 8 of 1999 are directly related to the general authority of BPSK in resolving consumer disputes. At least, there is 1 (one) point that is not in accordance with the general authority, namely the provisions of Article 52 Law Number 8 of 1999 letter (c), where BPSK supervises the inclusion of standard clauses (Nugroho, 2008: 84).

In addition to being contained in the Law Number 8 of 1999, the authority of BPSK can also be examined in: (1) Minister of Industry and Trade No. 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency; (2) Regulation of the Minister of Trade of the Republic of Indonesia Number 06/M-DAG/PER/2/2017 concerning Consumer Dispute Settlement Agency.

After analyzing these provisions, the authors conclude that in addition to general authority, BPSK also has at least 4 (four) special authorities related to general authority in resolving consumer disputes outside the court, namely: (1) Receiving requests for dispute resolution; (2) The authority to examine and resolve consumer disputes through conciliation, mediation, or arbitration; (3) The authority to decide and determine whether or not there is a loss on the part of the consumer; and (4) The authority to impose administrative sanctions on business actors violating the Law Number 8 of 1999 provisions.

The arrangements regarding the special authority of BPSK can be described in the discussion as follows:

3.1.1. Authority to Receive Requests for Consumer Dispute Resolution

Requests for settlement of consumer disputes at BPSK are regulated in Article 15 through Article 17 of the Decision of Minister of Industry and Trade No. 350/MPP/12/2001. In connection with this authority arrangement, the author wants to underline 2 (two) matters, namely: First, that there are no provisions governing the nominal limit of disputes that can be sued to BPSK. That is, BPSK has the authority to resolve all existing consumer disputes in accordance with the conditions specified above, regardless of the nominal disputed object. Meanwhile, if seen from administrative sanctions in the form of determining compensation, a maximum of Rp. 200,000,000, - which can be charged to business actors (Article 60 Law Number 8 of 1999), it appears that BPSK was actually formed to handle consumer dispute resolution with a small amount, such as consumer justice in other countries (Nugroho, 2008: 85) and also as stipulated in the Supreme Court Regulation No. 2 of 2015 concerning Procedures for Settling a Simple Lawsuit, there is a quick event to resolve a simple dispute with a maximum value of 200 million. Second, there are no restrictions on the types of consumer disputes that can be handled by BPSK in a civil manner. That is, BPSK can handle disputes in goods and services, including the financial services sector, as well as the sharia and non-sharia sectors.

Related to these two points, the author believes that: first, in the absence of these restrictions, it will certainly have a positive impact on consumers, because whatever and how much the object of consumer disputes (while meeting the specified requirements) can be processed through BPSK. Secondly, in the absence of these limits, the demand for BPSK's performance and performance is certainly a necessity, where BPSK must be able to become a strong, professional, independent, and "recognized" dispute resolution institution by the parties to the dispute, and fully supported by all existing stakeholders, specifically the authorities and regulatory and supervisory bodies of all existing consumer sectors / fields, and the Government as a whole.

3.1.2. Authority to Check and Resolve Consumer Disputes

Settlement of consumer disputes at BPSK is optional / not tiered. This is regulated in Article 4 paragraph (2) of the Decision of Minister of Industry and Trade No. 350/ MPP/Kep/12/2001 which explains that dispute resolution at BPSK is not a gradual dispute resolution process. That is, the settlement of consumer disputes at BPSK can be done by choosing the available methods, namely conciliation, mediation, or arbitration.

The author is of the opinion that related to the regulatory authority to examine and resolve consumer disputes, there are several weaknesses related to dispute resolution that are optional / not tiered at BPSK. The author believes that this is something unusual, because almost all existing civil dispute resolution institutions implement a tiered dispute resolution process. Settlement of tiered disputes will open up greater opportunities for peace, as well as provide greater opportunities for parties to be able to access justice through efforts to resolve outside the court.

The author also compares the concept of choice/non-tiered dispute resolution with Article 6 of the Arbitration Law and the APS, which basically embraces the concept of a gradual dispute resolution. In fact, this is so important, the civil court even requires the parties to take mediation efforts before proceeding to the litigation stage.

3.1.3. Authority to Decide and Determine the existence or absence of losses on the part of the consumer

The BPSK arbitration award is not final and binding. The explanation is as follows: Article 54 paragraph (3) of the Law Number 8 of 1999 states that the decision of the BPSK assembly is final and binding. In general, the meaning of a "final" award is that there is no appeal and appeal against the decision. While the meaning of "binding" is that the decision must be carried out by those required to do so. However, Article 56 paragraph (2) of the Law Number 8 of 1999 states that the parties can submit an objection to the district court no later than 14 (fourteen) working days after receiving the BPSK decision. With the opening of the opportunity to submit an objection, it can be said that the decision of BPSK has not been final or can be said to have no permanent legal force. In addition, the Elucidation of Article 54 paragraph (3) explains that the BPSK final decision is the absence of appeal and cassation remedies.

So, if it is connected with the provisions of Article 56 paragraph (2) of the Law Number 8 of 1999, it can be seen that the actual term of the BPSK decision is only meant as an appeal, but does not include an attempt to file an objection to a district court, which turns out that the district court's decision is still open again an opportunity to appeal to the Supreme Court.

According to the author, the contradiction of the articles regarding BPSK arbitration award in the Law Number 8 of 1999 certainly has a not simple legal impact, which has implications for the weak arbitration decision of BPSK and BPSK's own institutions, as well as providing legal uncertainty for the parties to the dispute. In addition, this regulation also contradicts the provisions in the Law Number 30 of 1999 certainly Arbitration Law and the Alternative Dispute Resolution as the umbrella law for the settlement of civil disputes through out of court in Indonesia.

According to Article 60 of the Law Number 30 of 1999, "the arbitration award is final and has permanent legal force and is binding on the parties". Therefore, there is no other remedy after the arbitration process. However, an arbitral award can be overturned by submitting a request to cancel a district court, with conditions provided for in Article 70 of the Law Number 30 of 1999: (1) a letter or document submitted during

an examination, after the award has been handed down, is recognized to be false or declared to be false; (2) after the decision has been taken, decisive documents are found, which are hidden by the opposing party; (3) the decision is taken from the results of a ruse carried out by one of the parties in the examination of the dispute.

3.1.4. Authority to Drop Administrative Sanctions on Business Actors who Violate the Provisions of the Consumer Protection Act

Administrative sanctions can only be imposed by BPSK if the dispute resolution method used is arbitration. Business actors are responsible for providing compensation for damage, pollution caused by consuming traded goods, and / or consumer losses for services produced.

3.2. Implementation of the Authority of the Consumer Dispute Resolution Agency in Indonesia

A rule of law although systematically and well regulated in legislation or other provisions will become a dead norm if the application is unable to meet demands of a sense of justice or provide other benefits to the general public (Nugroho, 2008: 12). According to Soerjono Soekanto, the core of the process of implementing a legal product is the harmonious application of values and rules which then manifest in a pattern of behavior (Soekanto and Abdullah, 1980: 14).

Related to the authority of BPSK in resolving consumer disputes as mandated in the Law Number 8 of 1999, the author believes that the implementation of BPSK's authority is still not optimal and still faces a number of obstacles. This can be observed from the following description:

3.2.1. Execution of Authority to Receive Requests for Settlement of Consumer Disputes

BPSK in carrying out its authority in receiving consumer dispute settlement requests must be based on applicable rules. In essence, BPSK must examine the complaints that come in, whether it is in accordance with its authority and whether the complaints have fulfilled the established requirements, including regarding their relative competence.

Related to this, the author found data that there were BPSK who received complaints outside their relative authority and had even processed them to issue an arbitration award. In fact, as mentioned in the previous section, the relative authority of BPSK is regulated in every Presidential Decree on the establishment of BPSK in the regions, which stipulates that "any impaired consumer or heir can sue business actors through BPSK at the consumer's domicile or at the BPSK closest".

One of the cases that the author got was in the BPSK Decision of Batu Bara District Number 934 /Arbitration/BPSK-BB/V/2016 dated August 30, 2016, the last of which was to take an appeal with Decision Number 731K/Pdt.Sus-BPSK/2017. In this case the Consumer is domiciled in Agam Regency (West Sumatra), the businessperson is located in Bukittinggi (West Sumatra), while the BPSK that handles disputes is BPSK in Batu Bara Regency (North Sumatra).

3.2.2. Execution of the Authority to Examine and Resolve Consumer Disputes

BPSK is an agency provided by the Government to facilitate the resolution of consumer dispute resolution outside the court, which offers alternative options for dispute resolution outside the court. BPSK was indeed given the authority to decide on disputes using the arbitration method. However, it should be remembered that in the theory of arbitration it is stated that the arbitrase is implemented if there is a written agreement between the parties that they agree to use arbitration in the settlement of the dispute. The agreement can be made before a dispute occurs or can also be made after a dispute between the parties.

In Article 32 of the Decision of Minister of Industry and Trade No. 350/MPP/Kep/12/2001, the theory is actually implied, namely by requiring that in the settlement of consumer disputes by arbitration, the parties elect arbitrators from BPSK members. However, in a number of cases, the authors found the fact that BPSK can make an arbitration award without the basis of an arbitration agreement between the parties. One case is the consumer dispute between ASHARI Vs. PT BANK MUAMALAT INDONESIA, Tbk related to the case of

default which the dispute settlement process originated from the arbitration process at BPSK Batu Bara Regency with Decision Number 12/PTS-Arb/BPSK-BB/I/2017 dated February 24, 2017, which basically won the consumers. BPSK decided the case in *verstek*, because the business actor was never present at the hearing even though it was summoned properly.

Related to this, the author considers that BPSK is also impressed to insist that consumer disputes can be resolved through arbitration at BPSK although in the agreement between the parties, the chosen legal remedy is through the National Sharia Arbitration Board (BASYARNAS) in Jakarta.

However, the author believes that even though it seems to impose arbitration, BPSK certainly has its own reasons for doing so. Because sometimes, standard clauses made by business actors, provide options for dispute resolution at the center, such as the District Court in Jakarta, or in the BASYARNAS Jakarta. Meanwhile, the object of the dispute is relatively small, consumers are domiciled in the area, as well as the need to sacrifice a lot of time, funds, and energy.

3.2.3. Execution of the Authority to Decide and Determine the Existence or Loss of Losses on the Consumer's Side

As stated in Article 55 of the Law Number 8 of 1999 which basically states that BPSK is required to issue a decision no later than 21 working days after the lawsuit is received. The 21 days were considered very short to resolve the existing dispute, which sometimes is not easy technical obstacles in the field. For example, to send a summons to business actors in different cities / regencies. Or for example waiting for the results of examinations from BPOM, etc.

In addition, related to the BPSK decision, throughout 2018, the Supreme Court has decided at least 96 cases of consumer disputes at the cassation level. More than 90% are breach of defaults in the financial services sector, and businesses are won in the case. This means that almost all BPSK arbitration decisions at the cassation level are always overturned by the Supreme Court, and of course this is a problem for BPSK. The reason is the same as described above, that BPSK is deemed not to have the authority to decide the case because it is not a consumer dispute, but is an ordinary civil dispute, so that the authority to decide is a court within the general court.

The author has examined a number of statutory regulations related to BPSK, including the most recent namely Regulation of the Minister of Trade Number 06/M-DAG/PER/2/2017 concerning Consumer Dispute Resolution Bodies, ([https://www.hukumonline.com/klinik/detail / lt5aaf18303d84a / verdict-verstek-if-one-defendant-not-present/](https://www.hukumonline.com/klinik/detail/lt5aaf18303d84a/verdict-verstek-if-one-defendant-not-present/), on July 19, 2019, at 13.48 West Indonesia Time) apparently there was no article that touched on this matter (whether BPSK was authorized to settle the default dispute or not). This means that the description of the duties and authority of BPSK is still the same as what is stipulated in the Law Number 8 of 1999 and Decision of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001.

The author believes that basically all disputes, especially in the civil field can be resolved through arbitration. However, the choice of settlement through arbitration must be with the agreement of the parties that they agree to settle the dispute through arbitration. The arbitration award should ideally be final and binding, and must be carried out by the parties in good faith. However, the author sees that there are 2 (two) reasons for the BPSK arbitration award which was canceled by the District Court and the Supreme Court.

First, as discussed in the previous section, there are a number of cases that impressed BPSK to force the resolution of consumer disputes through arbitration, whereas previously there was no agreement between the parties to settle disputes through arbitration and / or arbitration chosen not through BPSK. Arbitration is a dispute with the concept of a win-lose solution, and is adjudication. Arbitration should ideally be the final solution other than through litigation by parties when disputing. In many cases, even though business actors have summoned the parties appropriately, business actors will not want to attend dispute resolution at BPSK, for the reason that the parties have never agreed on it, or the option agreed in the agreement is the settlement of the dispute to the court. So, in this process business actors will definitely be defeated by reason of the verdict

decision. Therefore, when the verdict is issued by BPSK, the business actor will certainly make an objection to the district court, and the process may continue to the cassation stage at the Supreme Court.

Second, even if the parties agree to settle the dispute through arbitration at BPSK, the BPSK decision is not final and binding. This is contrary to the generally accepted concept of arbitration. There is a contradiction between the articles contained in the Law Number 8 of 1999 regarding this matter. Article 54 paragraph (3) of the Law Number 8 of 1999 states: "Decisions of the tribunal shall be final and binding". Whereas Article 56 paragraph (2) of the Law Number 8 of 1999 states that: "The parties may submit objections to the District Court no later than 14 (fourteen) working days after receiving notification of the decision".

3.2.4. Execution of Authority Imposes Administrative Sanctions on Business Actors Who Violate the Provisions of the Consumer Protection Act

BPSK may only impose administrative sanctions on business actors, with the limitation of these 4 articles. Then the next question is, is BPSK allowed to accept and resolve consumer disputes outside of the 4 articles? In practice in the field, BPSK is permitted to do so, for example related to the inclusion of an exoneration clause (Article 18 Law Number 8 of 1999). If we relate to the above provisions, then if it is permissible, BPSK will certainly be able to resolve the dispute, but of course with the condition that the decision does not impose administrative sanctions. It's just that, if not administrative sanctions, then what dictum is expected to be issued in the decision of the BPSK arbitration panel? For example, for violations of Article 18 of the Law Number 8 of 1999 related to the application of exoneration clauses in standard clauses, should criminal penalties be in accordance with the provisions of Article 62 of the Law Number 8 of 1999? While the authority to provide criminal sanctions is the court.

Related to this, the author believes that the provisions regarding the authority of BPSK in imposing administrative sanctions should be clarified. Because BPSK is generally allowed to resolve existing consumer disputes.

Furthermore, in the exercise of this authority, the author also takes an example of an interesting decision handed down by BPSK. Where in the decision, BPSK imposed criminal sanctions on business actors. The decision was BPSK Tebing Tinggi City Number 025/BPSK-TT/KEP.IX/2013, which was a dispute between Amor Patria Wati vs. Head of Supporting Branch of PT. Bank Syariah Mandiri Panyabungan Sub-Branch Office, which in its decision BPSK sentenced Business Actors to 4 (four) years in prison, for violating Article 62 of the Law Number 8 of 1999.

This ruling in general is of course contrary to the authority mandated by the UUPK jo. Decision of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency, because BPSK is not authorized to impose crimes against business actors, but only has the right to impose administrative sanctions (Kurniawati, 2017: 295-296).

IV. CONCLUSION

BPSK has the general authority to resolve consumer disputes outside the court. In addition, BPSK has a number of special authorities, namely: (1) accepting requests for dispute resolution. (2) examine and resolve consumer disputes. (3) decide and determine whether or not there is a loss on the part of the consumer. (4), impose administrative sanctions on business actors violating the Law Number 8 of 1999 provisions. In exercising this authority it can be concluded that there are a number of obstacles. For example, the application of relative authority that is not appropriate, overlapping arrangements related to the implementation of consumer disputes in the field of sharia in the UUPK and the Religious Courts Law, there are practices of consumer dispute resolution through arbitration that is not in accordance with existing legal concepts, non-compliance of business actors with BPSK calls, timeframes which is relatively short for resolving consumer disputes, canceling BPSK arbitration awards related to defaults by district courts and Supreme Court, there are practices where BPSK exceeds its authority in imposing sanctions on consumers.

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