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DISPUTE RESOLUTION METHODS THROUGH THE CONSUMER DISPUTE RESOLUTION AGENCY

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ABSTRACT

Consumer law is included in civil law in a broad sense, namely Civil Law and Commercial Law. In Indonesia, consumer protection issues began in the 1970s, marked by the establishment of the Indonesian Consumers Foundation in May 1973. This study uses a normative legal research method, the results of the study show that the Indonesian government created Law Number 8 of 1999 concerning Consumer Protection, to accommodate the interests and protection of consumers and business actors. The Consumer Dispute Resolution Agency has several dispute resolution methods using the Mediation, Conciliation, and Arbitration methods.

Keywords: Consumer Protection Law, Consumer Protection Act

INTRODUCTION

Global consumer law developed in the 19th century marked by the emergence of the consumer movement in the United States (US). The first wave occurred in 1891 marked by the formation of the consumer league in New York and was the first in the world, then in 1898 at the national level in the United States the national consumer league was formed. Then in 1906 the United States passed a consumer protection law, namely The Meat Inspection Act and the Food and Drugs Act, but in 1937 there was a tragedy known as Elixir sulfanilamide which killed 93 consumers in the United States. Finally the law was amended in 1938 to become The Food, Drug, and Cosmetics Act. After this, the development of consumer law in the world continued, marked by several countries starting to form consumer protection laws. Some of these countries are:

1. The United States, underwent several amendments in 1969 and 1970, the “unfair trade practices and consumer protection (lousiana) law” in 1973.
2. Japan, made a law in 1968, namely "The consumer protection fundamental act".
3. England, amended in 1971, “The consumer protection act”.
4. Canada, namely “The consumer amendment act” of 1971.
5. Then Singapore in 1975, “The consumer protection (trade description and safety requirement act).
6. Finland in 1978, “The consumer protection act”.
7. Ireland in 1978, “The consumer information act”.
8. Then Australia in 1978, “The consumer affairs act”.
9. Thailand in 1979, “The consumer act”.

These are some countries that began to form consumer protection laws at the beginning of the development of consumer protection laws.[1]

[1]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019) 8-9.

In Indonesia, consumer protection issues began in the 1970s. This was marked by the establishment of the Indonesian Consumers Foundation in May 1973. At that time, the idea of consumer protection was widely conveyed to the public through consumer advocacy activities, such as complaints, testing, research, education, and consumer media publications. Then in the 1980s, the struggle to realize the consumer protection law was carried out for years because at that time the New Order government and the DPR did not have a great desire to realize it, as evidenced by the ratification of the Consumer Protection Bill being postponed. And finally, after the New Order government fell and the reform era emerged, it was only then that the desire to realize the consumer protection law could be realized, precisely during the BJ Habibie administration. Precisely on April 20 , 1999, the Consumer Protection Law was passed.[2]

Consumer law is included in civil law in the broad sense, namely Civil Law (KUH Perdata), Commercial Law (KUH Dagang), and other civil rules contained in other legislation. Article 2 of the Consumer Protection Law states that consumer protection is a joint effort based on five (5) principles relevant to national development, namely:

1. The Principle of Benefit, in the sense that the presence of the Consumer Protection Law is expected to provide benefits for consumers and business actors. For consumers, the presence of the Consumer Protection Law emphasizes the position of consumers who have rights and obligations protected by law, in addition, for business actors, the presence of the Consumer Protection Law can encourage a healthy business climate and create companies that are responsible for competing and producing quality goods.
2. The Principle of Justice, with the presence of this UUPK, it is hoped that it can be realized optimally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly, because by creating a healthy business climate, it is hoped that it can help advance the quality of goods.
3. The principle of balance, this principle of balance is intended to provide a balance between the interests of business actors, consumers and the government, both in terms of regulation and enforcement of consumer protection norms.
4. Principle of Security and Safety, this principle is intended to provide safety and security to consumers in using goods and/or services that are consumed or used.
5. The principle of legal certainty, this principle is intended to provide legal protection for consumers and business actors and so that both consumers and business actors can obey the law and obtain justice, and the state guarantees legal certainty.

With the implementation of UUPK, it is hoped that it can provide definite guidelines for the implementation of consumer protection in Indonesia and it is hoped that all parties can exercise their rights and obligations in accordance with what has been determined by law.[3]

In its formation, the Consumer Protection Law has objectives that it wants to achieve and realize. There are several objectives listed in Article 3 of Law No. 8 of 1999 concerning Consumer Protection, namely :

1. Improving consumer capabilities, independence and awareness to protect themselves.

[2]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019) 10.
[3]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019) 25-27.

2. Raising the dignity of consumers and preventing them from negative access to the use of goods and/or services.
3. Increasing consumer awareness in determining, choosing, and demanding their rights as consumers.
4. Creating a legal protection system that contains legal certainty and openness of information and facilitates access to information.
5. Increasing business actors' awareness of the importance of consumer protection and fostering an honest and responsible attitude in business.
6. Improving the quality of goods and/or services and ensuring the continuity of the production of goods and/or services, health, security, safety and comfort of consumers.[4]

The term consumer comes from the word consumer in American English or consument in Dutch. In the general sense, the definition of a consumer is a user of goods and/or services for a specific purpose and according to Article 1 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection, "a consumer is any person who uses goods and/or services for the benefit of themselves, their family, other people, or other living beings."[5]

Consumers have rights and obligations guaranteed by law and stated in articles 4 and 5 of Law No. 8 of 1999 concerning Consumer Protection.

Consumer rights

1. The right to comfort, safety and security in using goods and services.
2. The right to choose goods and services and to obtain goods and services in accordance with the exchange value and conditions and guarantees promised.
3. The right to receive correct, clear and honest information regarding the condition and guarantee of goods and services.
4. The right to have complaints and opinions heard regarding the goods and services used.
5. The right to receive advocacy, protection and appropriate efforts to resolve consumer disputes.
6. The right to receive consumer guidance and education.
7. The right to receive treatment and services that are correct, honest and non-discriminatory.
8. The right to receive compensation, damages, replacement if the goods and services received do not comply with the agreement.
9. Rights regulated in other laws.

Consumer Obligations

1. Read and follow the information instructions and procedures for using goods and services for safety and security.
2. Have good faith in carrying out transactions to purchase goods and services.
3. Pay according to the exchange rate that has been mutually agreed upon.[6]

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[4]Ahmad Miru and SutarmanYodo, Consumer Protection Law (Bandung: PT Raja GrafindoPersada 2004) 26.
[5]AzNasution, "Legal Aspects of Consumer Protection, Teropong Journal, May 2003, Indonesian Judicial Monitoring Society, 6-7.
[6]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019) 39-40.

Business activities can now be found in various online media very easily, because at this time more complete information portals are presented on various sites and websites. Currently, there are many business actors who offer and sell their goods on buying and selling sites and they have succeeded in becoming successful even with capital that can be said to be very minimal. Currently, consumers are busy shopping online through online shop sites, even consumers now prefer to shop at online shops rather than having to look directly at shops around their homes, but with this new habit, it actually causes new problems for consumers starting from goods that are not appropriate when they arrive at home, goods that are not sent by business actors, late delivery and so on, and not infrequently when faced with this problem consumers are powerless to demand their rights.

Business actors are explained in Article 1 number (3) of Law No. 8 of 1999 concerning Consumer Protection, which is an individual or business entity in the form of a legal entity or not a legal entity that is domiciled and carries out business activities in the territory of the Republic of Indonesia .[7]Just like consumers, business actors also have rights and obligations that are guaranteed by Law No. 8 of 1999 concerning Consumer Protection and are contained in Articles 6 and 7.

Consumer Rights

1. The right to receive payment in accordance with the agreement regarding the conditions and exchange value of goods and/or services.
2. The right to legal protection against bad consumer actions.
3. The right to defend oneself in resolving consumer disputes.
4. The right to obtain rehabilitation of good name if it is not legally proven that the loss experienced by the consumer was not caused by the business actor.

Consumer Obligations

1. Business actors in carrying out their business activities must act in good faith.
2. Business actors must provide correct, clear and honest information regarding the condition of the goods and provide an explanation of use, repair and maintenance.
3. Business actors must serve customers properly and honestly and without discrimination.
4. Guaranteeing the quality of goods or services produced or traded based on applicable quality standards.
5. Providing consumers with the opportunity to test, try goods, provide guarantees or warranties for the goods or services traded.
6. Providing compensation or redress for the use, consumption and utilization of traded goods or services.
7. Providing compensation or restitution for losses resulting from goods or services received that do not match those agreed upon.[8]

The principles regarding the position of consumers in relations with business actors are based on doctrines or theories known in the historical development of consumer protection law, including:

1. Let The Buyer Beware (Caveat Emptor)

   This doctrine is the basis for the emergence of disputes in the field of consumer transactions. This principle assumes that business actors and consumers are two

[7]Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

[8]Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

equal parties so that consumers do not need protection. In this doctrine, if consumers suffer losses, business actors can argue that the losses experienced by consumers are the result of the consumer's own negligence.

2. The Due Care Theory
   This doctrine states that business actors have an obligation to be careful in marketing their products, both goods and services. And as long as business actors are careful, they cannot be blamed.
3. The Privileged Contract
   This doctrine states that business actors have an obligation to protect consumers, but this can only happen if there has been a contractual relationship between them, or an agreement has been made. And business actors cannot be blamed outside of the things agreed upon. Thus, the lawsuit that can be filed by consumers is a lawsuit for breach of contract.[9]

Consumer protection, consumer protection issues are currently being discussed more and more because in the current era of free trade, many products and services are offered by business actors to the public. However, this is a problem because the rights and interests of consumers in the current era are often ignored by business actors, so that the position of consumers is below that of business actors, this is certainly not in line with the objectives of the Consumer Protection Act. This must of course be considered together.

The problems faced by consumers are not only about how to choose goods, but are much more complex than that, concerning the awareness of all parties, both business actors, the government, and the consumers themselves. Business actors must realize that they must respect consumer rights, and produce quality goods or services that are safe to use or consume, and of course by following applicable standards, and appropriate prices. The government must also realize that there is a need for laws and regulations that regulate the transfer of goods or services from business actors to consumers, and the government is also tasked with overseeing that the regulations made run well.

The government in implementing consumer protection does many ways , one of which is by establishing institutions that work to protect consumer protection. And these institutions are also regulated in the UUPK as the basis for their formation. Through Government Regulation No. 57 of 2001, the National Consumer Protection Agency was formed, and operationally this institution was only implemented on October 5, 2004 in accordance with Presidential Decree No. 150 of 2004. This BPKN is an independent institution formed by the government which functions to provide advice and considerations to the government in efforts to develop consumer protection in Indonesia. BPKN has functions and duties as stipulated in articles 33 and 34 of Law No. 8 of 1999 concerning Consumer Protection. The functions and duties of BPKN are:

1. Providing advice and recommendations to the government in order to formulate consumer protection policies.
2. Conducting research and review of regulations relating to consumer protection.
3. Conduct research on goods or services concerning consumer safety.
4. Encourage the development of non-governmental consumer protection institutions.

[9]Shidarta, Indonesian Consumer Protection Law (Jakarta: PT Grasindo 2006), 61.

5. Disseminating information regarding consumer protection and expressing a bias towards consumers.
6. Receive complaints about violations against consumers from the public, non-governmental consumer protection institutions, or business actors.
7. Conducting surveys regarding consumer needs.

In terms of membership, BPKN consists of several elements, there are elements from the government, business actors, LPKSM, academics and experts, and the total number is 17 members and assisted by several secretariat staff. BPKN is domiciled in the Jakarta area. BPKN has also determined its duties and work procedures based on the decision of the chairman of BPKN No.02 / BPKN / KEP / 12/2004. Then to facilitate and accelerate its work, BPKN formed several commissions, namely Commission I Research and Development, Commission II Information Education and Complaints, Commission III Cooperation .[10]

Community-based Consumer Protection Institution (LPKSM). This institution operates in the field of consumer protection, LPKSM also in UUPK has the opportunity to play an active role in realizing consumer protection. The Community-based Consumer Protection Institution (LPKSM) has the following duties:

1. Disseminating information to increase awareness of consumer rights and obligations and caution in consuming goods or services.
2. Providing consultation to consumers who need it.
3. Cooperate with related agencies in efforts to realize consumer protection.
4. Helping consumers fight for their rights. And receiving consumer complaints and grievances,
5. Conduct joint supervision between the government and the community in implementing consumer protection.

Until now, the Community Self-Help Consumer Protection Institution (LPKSM) has grown to approximately 200 institutions spread across various Provinces, Regencies and Cities in Indonesia. However, there are 107 registered Community Self-Help Consumer Protection Institutions (LPKSM).

In addition to the two institutions above, there is another consumer protection institution contained in the Consumer Protection Act. The institution is spread across every region in Indonesia, the institution also resolves consumer disputes without having to go through the courts.

METHOD

This study uses a normative legal research method. Normative legal research is an approach carried out based on primary legal materials by examining theories, concepts, legal principles and laws and regulations related to research in this scientific journal. This approach is also known as a literature approach, namely by studying books, laws and other documents related to this research

DISCUSSION

Consumer Dispute Resolution Agency (BPSK)

The Consumer Dispute Resolution Agency is an independent institution established to carry out the handling and resolution of consumer disputes through mediation, conciliation, and arbitration. Then the duties of the BPSK also provide consumer protection consultations, supervise the inclusion of standard clauses, receive

[10] Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019) 74-78.

complaints both written and unwritten, summon business actors suspected of committing consumer violations, summon witnesses, and impose administrative sanctions on business actors who commit violations against consumers.[11]

The Consumer Dispute Resolution Agency is a non-structural institution based in the Regency and City and has the function of resolving disputes outside the court. In its membership structure, the Consumer Dispute Resolution Agency consists of elements of the Government, Consumers, and Business Actors. With the existence of the Consumer Dispute Resolution Agency, it is expected to be able to facilitate, accelerate and guarantee legal certainty for consumers who want to claim their rights from Business Actors. The Consumer Dispute Resolution Agency also has the authority to conduct research and examination of evidence in the form of letters , documents, evidence of goods, laboratory test results, and other evidence, both submitted by consumers and business actors.

The Consumer Dispute Resolution Agency is also a special consumer court with a fast, cheap, and simple process. The examination is carried out by a single judge and the presence of third parties such as lawyers is not permitted. The decision of the BPSK cannot be appealed unless it is contrary to applicable laws.[12]

The Ministry of Trade noted that there are 73 Consumer Dispute Resolution Agencies from 491 districts in Indonesia, this number is considered small at only 12.46 percent. This was conveyed by the Director General of Standardization and Consumer Protection, Nus NuzuliaIshak in Mataram, Tuesday (25/9).[13]

The duties and authorities of the Consumer Dispute Resolution Agency according to Article 52 of Law No. 8 of 1999 concerning Consumer Protection are as follows:

1. Carrying out handling of consumer dispute resolution through mediation , conciliation or arbitration.
2. Providing consumer protection consultation for consumers.
3. Supervise the inclusion of standard clauses by business actors.
4. Report to the general investigator if there is a violation of the provisions in this Law.
5. Receive complaints from consumers, both written and unwritten, regarding violations against consumers.
6. Conducting research and investigations into consumer disputes.
7. Summoning business actors suspected of committing violations against consumers.
8. Summoning and presenting witnesses, expert witnesses, or people who are deemed to know about violations of this Law.
9. Request assistance from investigators to present business actors, witnesses, expert witnesses, or other parties who know of violations of this Law.
10. Obtaining, assessing, and examining letters , documents, or other evidence for investigation or examination.
11. Imposing administrative sanctions on business actors who violate the Consumer Protection Law.[14]

[11] ZainulAkhyarHarpaniMatnuh and Hardianto, 'The Role of the Consumer Dispute Resolution Agency of Banjarmasin City' (2015) Journal of Citizenship Education 773, 774.
[12] Celina Tri SiwiKristiyanti, Consumer Protection Law (Jakarta: SinarGrafika 2018), 126.
[13] ANT, 'Number of BPSK Only 12.46 Percent' (2012), HukumOnline.com, Accessed June 2, 2021.
[14] Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

Mediation, Conciliation, and Arbitration Settlement Methods at the Consumer Dispute Resolution Agency (BPSK)

The existence of a legal relationship between business actors and consumers causes disputes, this happens because the goods received by consumers are defective, do not match, or do not even reach consumers. Of course, there are two ways to resolve this dispute, some are through out-of-court and in-court. However, on this occasion the author will discuss the settlement of consumer disputes outside the court. Settlement of consumer disputes outside the court can be done through the Consumer Dispute Resolution Agency in each Regency and City. In the settlement through BPSK, there are 3 dispute resolution methods, the first is mediation, conciliation, and arbitration. From each of these settlement methods there are differences that are actually not too significant. The disputing parties are also given the freedom to choose which method they want to go through.

1. Mediation

   The first dispute resolution is through Mediation. If a dispute occurs, it is attempted to be resolved through mediation first. Mediation is a dispute resolution with a third party as an intermediary. The third party in question is a party that provides input and advice to the parties to resolve their dispute. Based on the Circular of the Directorate General of Domestic Trade Number 40/PDN/02/2010 of 2010, it explains the three stages of Mediation, namely the pre-mediation stage, Mediation, and handling of follow-up actions. At the pre-mediation stage there are stages that must be passed, namely:

   1) Registration and recording of complaints.
      A. Consumers submit complaints directly to the trade department .
      B. Fill out the consumer complaint form.
      C. The officer records the complaint in the agenda book.
      D. Officers create consumer complaint resolution matrices.
   2) If the registration and recording are complete and correct, mediation is ready to be carried out and the service determines the day for the mediation to be carried out.
   3) If the consumer does not attend the first invitation, the consumer complaint is considered to have been dropped.
   4) If the business actor is not present at the first invitation, the department will again call the business actor.
   5) Pre-mediation is carried out no later than seven working days from when the consumer signs the consumer complaint form.

   After these stages are fulfilled by the disputing parties, the next stage is the mediation stage. In the mediation stage there are several provisions that are regulated:

   1) Mediation is led by an official who acts as a mediator and is assisted by a notary.
   2) The mediator conveys the mediation rules.
   3) The mediator conveys the principles of handling consumer dispute resolution.
   4) The mediator conveys the rights and obligations of the parties as regulated in Law No. 8 of 1999.

5) The mediator provides equal opportunities for business actors and consumers to convey their problems and expectations.
6) The notary records everything during the trial.
7) The mediator directs the parties to resolve the dispute through deliberation and family.
8) If an agreement is obtained from the parties, the mediator makes an official report and it is signed by the parties, mediator and witnesses.
9) If the business actor is unable to accept the consumer's demands, the mediator provides:
   A. A maximum of five working days is given to complete evidence to refute consumer claims.
   B. The mediator determines the time for further mediation.
10) If no agreement is reached between the parties , the mediator will provide an alternative dispute resolution through the local court.
11) If the minutes have been signed by the parties, the complaint is considered complete.
12) The consumer dispute resolution process through the courts is carried out no later than 12 working days from the registration and recording of the complaint.

After all these processes have been completed, the next step is to follow up on the opportunities that have been achieved between the parties. This is the purpose of carrying out mediation.[15]

2. Conciliation

Conciliation is a form of dispute resolution process outside the court, similar to Mediation. In the process, other parties outside the court are involved as passive facilitators. And this facilitator has received approval from BPSK. This conciliation has several stages that must be passed by the parties as follows:

1) Consumers who feel they have been harmed can report complaints to resolve disputes to BPSK, either verbally or in writing.
2) After all requirements are met by the consumer, the BPSK secretariat reports the complaint to the BPSK chairman.
3) Within 3 days, the BPSK chairman will summon the business actor in writing by attaching a copy of the complaint.
4) The summons letter given to the business actor contains the day, hour, date and place of the trial.
5) In response to the summons , the business actor is required to provide a response letter to the complaint at the first hearing.
6) The inspection is carried out by three people who are elements of consumers, business actors, and government, and assisted by a clerk.
7) During the examination, the panel was passive and only provided opinions to the disputing parties.
8) Business actors must be able to show evidence to strengthen their arguments regarding the accusations they receive.
9) If an agreement is reached between the parties, the panel will make a decision no later than 20 days after the application is received.

[15]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019)

10) The parties make a dispute resolution agreement and it is signed by the parties, the entire panel, and the panel chairman.
11) Within a period of no later than seven working days since the decision was read to the parties, and after a period of 14 days there are no objections, then within a period of 7 days the parties are obliged to implement the decision.[16]

The decision of the BPSK is final and binding on the parties and the decision can be requested for an execution order to the local district court.

3. Arbitration

This arbitration is a dispute resolution agreed by the parties to be resolved by a third party. Currently, arbitration settlement is considered simpler by the parties because the arbitration process is not so complicated and the time period for the determination has been determined. According to the Decree of the Minister of Domestic Trade of the Republic of Indonesia No. 350 / Mpp / KEP / 12/2001 of 2001 "arbitration is a dispute resolution outside the court and the parties have fully submitted to BPSK". In terms of the process carried out in Arbitration, it is basically the same as in Conciliation, but what distinguishes here is the role of the panel, if in the conciliation process the panel is passive, in the arbitration process the panel is active in determining the course of the dispute resolution process. And also the decision in arbitration is made by the panel.[17]

Case Example of Consumer Violation Due to Airplane Delays

Almost fourteen years ago, a Wings Air passenger named David Tobing fought for compensation for the delay he experienced at the Central Jakarta District Court in case No. 309/PDT.G/2007/PN.Jkt.Pst.David. This man is an advocate who often handles consumer protection cases. On August 16, David was going to travel to Surabaya to attend a trial using Wings Air IW 8985. The departure was planned for 08.35 WIB. After waiting for an hour, David was told by the officer that his plane would be 90 minutes late because the plane was still in Yogyakarta. Due to this delay, David was forced to find another flight to Surabaya. In his trial against Wings Air, the panel of judges who examined and tried this case won David's case. " granted the lawsuit in its entirety". The judge ordered Lion Air to pay compensation of Rp. 718,500 and court costs of Rp. 234,000. The judge also stated that the standard clause regarding the transfer of responsibility for losses incurred due to cancellation and/or delay in transportation was declared null and void and had no binding legal force.[18]

CONCLUSION

From the discussion above, it can be concluded that in Indonesia consumer law began to emerge in the 1970s and its emergence was also marked by the establishment of YLKI (Indonesian Consumer Foundation) in May 1973. Then the Indonesian government made Law No. 8 of 1999 concerning Consumer Protection where this Law was created to accommodate the interests and protection of consumers and business actors. In this UUPK, there are regulations to resolve if a dispute occurs between consumers and business actors. then in this consumer protection there are several institutions that are formed for the benefit of implementing this consumer protection law, including these

[16]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019), 92-94.
[17]Abdul Atsar and Rani Apriani, Consumer Protection Law (Deepublish 2019), 94.
[18]Abdul Atsar and Rani Apriani, Consumer Protection Law (2019), 132-133.

institutions, BPKN (National Consumer Protection Agency), BPSK (Consumer Dispute Resolution Agency), and LPKSM (Non-Governmental Consumer Protection Institution).

In the discussion above, BPSK is an agency that has the authority to resolve consumer disputes, BPSK is located in each Regency and City. The Consumer Dispute Resolution Agency (BPSK) has several dispute resolution methods, namely Mediation, Conciliation, and Arbitration. In resolving disputes through BPSK, the parties are given the freedom to choose their own resolution method. and dispute resolution through BPSK is a simple, cheap, and fast alternative resolution.

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