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THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER



Our Speaker



Prof. Henning Glasser
 Thammasat University



Prof. Yuzuru Shimada
 Nagoya University



Melissa Crouch
 UNSW Australia



Prof. Henk Adding
 Utrecht University



Assoc. Prof. Dr. Hj. Sri Kusriyah
 Sultan Agung Islamic University

*Democracy In Digital Era : Law,
 Governance, Sosial And Economic
 Perspective In Asia, Australia And
 Dutch*



September 23-24, 2020
 Imam Assafel Buiding, Faculty of Law, Unissula
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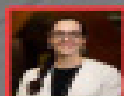
THE 2ND INTERNATIONAL CONFERENCE AND CALL FOR PAPER

THEME : DEMOCRACY IN DIGITAL ERA: LAW, GOVERNANCE, SOCIAL AND ECONOMIC PERSPECTIVE IN ASIA, AUSTRALIA AND DUTCH

Keywords: *Digital Media, Political and Governance Institutions, Electoral Processes, People Representation, Digital Disinformation, Democracy, Digital Economic, Social issue*



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Melissa Crouch
UNSW Australia



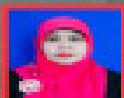
Prof Henk Adding
Utrecht University



Prof. Henning Glaser
Thammasat University



Prof. Yuzuru Shimada
Nagoya University



Assoc. Prof. Dr. Hj. Sri Kusriyah
Sultan Agung Islamic University

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1. Seminars will be conducted using the Zoom application
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This agenda aims to provide insights in theory and practice:

1. To exchange and discuss views on the most important issues on Democracy in Digital Era: Law, Governance, Social and Economic Perspective in Asia, Australia and Dutch and its consequences to Law in countries.
2. To discuss the challenges and practical aspect of Democracy and Governance in a Digital Era.

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Erna Sunarti, S.Pd.,M.Hum.
Nailul Mukorobin, S.Psi.

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Semarang 50112 – Indonesia

Phone: +6224 6583584 (8 Saluran) psw. 569

Fax. + 6224 6592735

Email : pdih.fh@unissula.ac.id

www.pdih.unissula.ac.id / www.apic.unissula.ac.id

KATA PENGANTAR

Bismillahirrohmanirrohim

Assalamu'alaikum Wr. Wb.

Puji syukur kehadiran Allah S.W.T, Tuhan Semesta Alam Yang Maha Esa. Alhamdulillah, sebagai ucapan syukur kehadiran Allah Subhanahu Wata'ala kami dapat menyelenggarakan The 6nd Proceeding International Conference And Call Paper dengan tema "*Democracy In Digital Era : Law, Governance, Sosial And Economic Perspective In Asia, Australia And Dutch*" terselenggara dengan baik. Pemilihan tema tersebut dipilih karena pada era searang ini kita dihadapkan dengan era industri 4.0, dimana para kandidat doktor dituntut untuk bisa menyesuaikan dengan perkembangan global dan meningkatkan kompetensi keilmuan serta kemampuan.

Pada seminar ini telah dipresentasikan hasil penelitian dosen dan mahasiswa yang diikuti oleh peneliti-peneliti dari berbagai universitas yang telah membahas berbagai keilmuan Hukum dan Humaniora.

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Fiduciary Dispute Resolution Through The Consumer Dispute Settlement Agency

Syariwal Heri, Siska Amilia, Norasya Verdiana, & Anis Mashdurohatun

anism@unissula.ac.id

Faculty of Law Sultan Agung Islamic University

Abstract

The purpose of this study is to determine the fiduciary dispute resolution mechanism through the consumer dispute settlement agency (BPSK). The approach method used is normative juridical. The results of the research obtained state that the resolution of consumer disputes is carried out in the form of a panel, meaning that consumer disputes are examined and decided by the BPSK assembly, with at least 3 (three) BPSK members as an assembly assisted by a clerk. In other words, examination of consumer cases is similar to examinations carried out by judges in court, therefore, this BPSK can be called a moot court (quasi court). The decision given by the BPSK panel in this consumer dispute is final (in kracht van gewijsde), binding, and cannot be appealed again. efforts to resolve consumer disputes through BPSK face problems including: the task is too complex because it functions as a consumer dispute resolution institution and includes guidance and supervision. There are no clear rules regarding budget allocations. Lack of human resources for BPSK members, and low legal awareness of consumers and business actors

Keywords : *BPSK; Dispute Resolution; Fiduciary;*

A. INTRODUCTION

The development of the economic system in the era of globalization has had a huge influence on the model of economic transactions carried out in various countries. In Indonesia, the development of the economic system has also influenced the emergence of new types of transactions that are not known in *Burgerlijk Woetbok* (BW).¹ Currently, unknown transactions such as lease agreements, leasing, factoring, and other transactions are in the same breath as these transactions. In this case, lease agreements and new sale and purchase agreements develop as a result of business habits and needs in the community domain.²

The concept of building a nation is an obligation that this development must be used by all citizens without exception. As a rule of law, Indonesia places people's sovereignty as the basis for formulating a national development system. National development must be directed towards the realization of a just and prosperous society based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.³

1. Bambang Tri Bawono, Construction Contract Of Hire Purchase And Correlation With Criminal Offense, *International Journal of Law Reconstruction*, Volume III, Issue 1, March 2019, p.35-47

2. Vienna P. Setiabuddi, Default Vehicle Hire Purchase Agreement, *Unsrat Law Journal*, Vol. 1, Number 1, 2013, p. 95.

3. Sri Endah Wahyuningsih, Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa, *Jurnal Pembaharuan Hukum*, Volume I No.1 Januari-April 20

On the one hand, the growth and development of the goods and services industry has had a positive impact, such as the availability of goods and services in sufficient quantities and the availability of alternative choices for consumers in selecting goods and services according to consumer needs. Producers or business actors will seek the highest profit in accordance with economic principles. In order to achieve the highest profit, producers or business actors must compete among business actors with their own business behavior that can harm consumers. The tight competition can change behavior towards unfair competition because business actors have conflicting interests among business actors. This unhealthy competition can later harm consumers.⁴

The fulfillment of the right to live that is decent for humanity has also been explicitly stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia that states that every citizen has the right to obtain a life worthy of humanity. The concept of a *welfare state* is a government concept that places the state as the main key holder to protect and improve the economy and welfare of its people. This concept is implemented on the basis of the principles of equal opportunity and distribution of wealth, as well as the responsibility of the government (state) to provide minimal services for disadvantaged and vulnerable groups of people. Based on this, consumer protection is an important part of healthy and just business activities.

The credit agreement is the principal agreement that is the basis of the follow-up agreement, while the fiduciary guarantee agreement is an assessment agreement. In principle, the assessment agreement is made separately from the main agreement. To ensure legal certainty and legal protection from debtors, the guarantee commitment is not only made in writing but is made authentically.⁵

In the fiduciary guarantee agreement, both the fiduciary and the fiduciary under the fiduciary guarantee law are given legal protection. For the protection provider, this is in the form of usufructuary rights over the collateral object, and defaults of the guarantor will not cause the collateral to change its ownership rights.⁶The Fiduciary Security Act provides preference rights over debts and the *droit de suite* principle applies to collateral. For third parties, the principle of publicity in the fiduciary guarantee agreement will provide information on objects being diffused.⁷

One of the activities in the world of banking or other financial institutions as a financial institution that collects funds from the public is the provision of credit, but this carries risks. Therefore, for the security of providing credit, a guarantee institution is needed. The creditor has the right to claim his receivable against the pledged assets of the debtor, if the debtor does not meet his performance voluntarily by selling the pledged object and the proceeds to fulfill the debtor's debt. If the debtor is in default, it will be difficult for the creditor to get the loan repayment from the debtor if there is no guarantee institution in the agreement. The bank as a creditor prefers a material guarantee agreement because it will give priority rights (preference rights).⁸

Consumer finance companies usually ask for certain guarantees such as guarantees in credit. These guarantees include main guarantees, basic guarantees and additional guarantees. This guarantee is used

4. Janus Sinabalok, *Consumer Protection Law in Indonesia*, Citra Aditya Bakti, Bandung, 2014, p.2.

5. Sudiharto, Authenticity of Fiduciary Guarantee Deed that was not signed before a Notary Public, *Journal of Legal Reforms*, Volume II No. 3 September-December 2015, pp. 412-418

6. Bambang Suprabowo, Anis Mashdurohaturun, Eman Suparman, [The Inhibiting Factors On Legal Protection For Recipients Of Fiduciary Warranties With Inventory Guaranteed Objects](#), *South East Asia Journal of Contemporary Business, Economics and Law*, Volume 3. 2019. pp.2289

7. Muhammad Hilmi Akhsin, Anis Mashdurohaturun, Legal Consequences of Fiduciary Security Not Registered According to Law Number 42 of 1999, *Journal of Deeds*, Vol. 4 No. 3 September 2017, pp. 485-500.

8. Elis Herlina dan Sri Santi, Legal Protection for Consumers in Financing Agreements with Unregistered Fiduciaries, *Ius Quia Iustum Legal Journal*, Vol. 25 No. May 2, 2018, pp. 277-299

to further secure the financing provided. Not many consumers realize that the negative consequences and possibilities are very binding behind the various facilities offered.⁹ Because actually clear, correct, and honest information on a product that is circulated by a business actor is something that is most needed by consumers. The delivery of information to consumers can be in the form of representations, warnings or instructions.

In a healthy business activity there is a balance of legal protection between consumers and producers. The absence of balanced protection causes consumers to be in a weak position.¹⁰

The function of Law Number 8 of 1999 concerning Consumer Protection is to protect consumer rights from irresponsible behavior of business actors. The role of the State or Government is to protect its citizens from this irresponsible practice. So the government formed a Consumer Dispute Resolution Agency (BPSK) in every district / city throughout Indonesia.¹¹

The Consumer Protection Act has provided guidelines on procedures and mechanisms for consumer dispute resolution. Article 45 paragraph (2) of the Consumer Protection Law provides that “Consumer dispute resolution can be pursued through a court or outside the court based on the voluntary choice of the disputing parties”. Out-of-court consumer dispute resolution as referred to by the Consumer Protection Law is through the Consumer Dispute Resolution Agency, (hereinafter abbreviated as BPSK), which is an agency formed by the government. This agency is in charge of handling and resolving disputes between business actors and consumers, but is not part of the judicial authority.¹²

The dispute process occurs because there is no common ground between the disputing parties. Potentially, two parties who have different views / opinions can move into a dispute situation. In general, people will not express opinions that result in open conflict. This is due to the possibility of unpleasant consequences where a person (personally or as a group representative) has to face a complicated situation which contains uncertainty that can affect his position.¹³ Based on this, the purpose of this study is to determine the fiduciary dispute resolution mechanism and its weaknesses through the consumer dispute resolution agency (BPSK).

B. Research Methodology

The research method used in this paper is a normative juridical approach. The normative juridical approach is a legal research approach that is carried out by examining library materials or secondary data as the basis of research by searching for rules and literature related to the problem under study. The data analysis used in this research is descriptive qualitative by analyzing the data / information obtained through descriptive research with literature study which is then arranged systematically and described qualitatively. Secondary data is data obtained from library materials through literature studies and the data is also obtained from agencies related to the purpose of this research.

C. Result and Discussion

1. Fiduciary Dispute Resolution at the Consumer Dispute Resolution Agency (BPSK).

9. Yusuf Shofie, *Consumer Protection and its Legal Instruments*, PT. Citra Aditya Bakti, Bandung, 2000, Pg 15

10. Anis Mashdurohatusun, Fuji Lestari, and Ukie Tukinah, Consumer Protection Of The Listing Of Standard Clause In E-Commerce Transactions Based On The Value Of Pancasila Justice, *International Journal of Advanced Science and Technology* Vol. 29, No. 6, (2020), pp.1520.

11. Vicka Prama Wulandari, Juridical Review of Palangka Raya City Consumer Dispute Resolution Agency in Order to Resolve Consumer Disputes Through Mediation (Case Study of Dian Purnamawati Against PT. Sinar Mas Multifinance, Palangka Raya Branch), *Journal of Morality*, Volume 4 Number 2 December 2018, pp. 98-114

12. Dadang Supardi, Legal Certainty Against Attempts to Objection by the Bank on the Decision of the Consumer Dispute Resolution Agency in Consumer Lawsuit, *Journal of Law*, Faculty of Law, Unpas, May-July 2017 Edition, pp. 1-23

13. Taufiq Effendi, *Op.Cit.*, p.43.

Fiduciary disputes must be resolved so that a good relationship is created between business actors and consumers in which each party can regain their rights. ¹⁴This legal dispute resolution aims to provide a settlement that can guarantee the fulfillment of the rights of the two disputing parties so that a sense of justice can be upheld and the law is carried out properly. Furthermore, good consumer dispute resolution can create and maintain business activities in a guaranteed manner. For business actors, there is certainty in doing business and on the part of consumers that it can fulfill consumer needs properly.¹⁵

The transfer of ownership rights to fiduciary security is solely as a guarantee for debt repayment and is not for the recipient of the fiduciary to have. Article 33 of the Fiduciary Guarantee Law stipulates that any promise that gives the fiduciary authority to own objects that are the object of the fiduciary security if the debtor is in default will be null and void by law.

The words "on the basis of trust" may be interpreted as saying that the creditor by submission is not really the owner of the collateral. Because the guarantor believes that when the debt is repaid, the guarantor will again receive the title to the collateral.¹⁶

Article 1 point 2 of the Fiduciary Guarantee Law stipulates that fiduciary security is a guarantee right over movable objects, both tangible and intangible, and immovable objects, especially buildings that cannot be encumbered with mortgages. This is referred to in Law Number 4 of 1996 concerning Mortgage Rights which remain under the control of the fiduciary and as collateral for the settlement of certain debts which give fiduciary priority over other creditors. Therefore, the Fiduciary Guarantee Law states that fiduciary security is collateral for material or material security (*zakelijke zekerheid, security right in rem*) which gives priority to fiduciary recipients, which is a right that takes precedence over other creditors.¹⁷

Article 4 of the Fiduciary Guarantee Law stipulates that the fiduciary guarantee is a covenant of a principal agreement that creates an obligation for the parties to fulfill an achievement. A fiduciary guarantee agreement as a follow-up agreement or *assesoir* is as follows:

- a. The nature of its dependence on the main agreement;
- b. Its validity is determined solely by the validity of the main agreement;
- c. As a conditional agreement, it can only be implemented if the conditions required in the main agreement have been or have not been fulfilled.¹⁸

This can be seen in Article 19 paragraph (1) of the Fiduciary Law: "The transfer of rights to receivables guaranteed by fiduciary results in the transfer of all rights and obligations of the fiduciary recipient to new creditors by law. Moreover, Article 25 of the Fiduciary Law states that the fiduciary security is nullified, if the debt secured by fiduciary is written off. In other words, fiduciary guarantees are *accessoir*. This means that the fiduciary guarantee does not stand alone but its existence or termination depends on the main agreement.¹⁹

Consumers and business actors have an equal relationship because they need each other. Various facilities are offered by business actors to help consumers who do not have sufficient funds to get the goods

14. Anis Mashdurohaturun, Bambang S and Eman Suparman, Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values, J.Eng. Applied Sci, Volume 14, Issue,12,2019,pp. 4176-4182.

15. Hesti Dwi Atuti, Constraints on Consumer Dispute Resolution through the Consumer Dispute Resolution Agency (BPSK), *Mimbar Justitia Journal*, Vol. I No. 02 July-December 2015 Edition, pp. 572-591

16. Gunawan Widjaja, Ahmad Yani, *Fiduciary Guarantee*, PT. Raja Grafindo Persada, Jakarta, 2007, p. 136

17. *Ibid.*

18. O. K. Isnainul, Anis Mashdurohaturun, Gunarto & Darwinsyah Minin, Ideal Legal Concept of Fidusia Guarantee Registration Obligations by Justice-Based Financing Companies* *Journal of Asian Research*, Vol. 3, No. 2, 2019, pp.141

19. Faranisa Yona Ramadhani, Muhamamad Fakih, Dita Febrianto, Position of Authentic Deed Made by Notary on Making Fiduciary Deed, *Pactum Law Journal*, Volume 1 No.1, 2017, p. 4

needed by consumers through financing institutions as outlined in the form of financing agreements with fiduciary property rights. The financing agreement is signed by the consumer with a kind of joint statement and power of attorney to withdraw / take back the vehicle.

This financing is provided with a credit agreement to consumers. Problems will arise if consumers are in arrears in installment payments. Then the finance company will take the goods back. The obligation of fiduciary recipients to register collateral at the Fiduciary Registration Office is also contained in Article 1 of the Minister of Finance Regulation Number 130 / PMK.010 / 2012. Then, Article 2 of the Ministerial Regulation states that financing companies are required to register fiduciary guarantees at the Fiduciary Registration Office no later than 30 days from the date of the consumer financing agreement.²⁰

According to Article 3 of the Minister of Finance Regulation No. 130 / PMK.010 / 2012, finance companies are prohibited from withdrawing fiduciary collateral in the form of vehicles if the Fiduciary Registration Office has not issued a fiduciary guarantee certificate and submitted it to the finance company.²¹

The main characteristic of a fiduciary agreement is that the collateral object must remain in the control of the debtor. If the collateral is surrendered or controlled by the creditor, the fiduciary agreement is invalid. If the debtor who provides the fiduciary does not fulfill his obligations, the fiduciary recipient can withdraw the fiduciary property for sale to cover the debtor's debt. However, if the fiduciary does not register the fiduciary security object, the fiduciary recipient does not have the right to take the collateral object.

Due to the existence of executive power over registered fiduciary guarantees, in practice there are finance companies that do not register objects of fiduciary security. But the company still took the collateral object, even by force. This is of course very detrimental to the fiduciary as a consumer.

Article 1 number 1 of Law Number 8 Year 1999 concerning Consumer Protection states "Consumer protection is all efforts that ensure legal certainty to provide protection to consumers". Consumer comes from English term "consumer" and Dutch term "consument" which literally means a person or company that buys certain goods or uses certain services, or something or someone who uses a stock or a number of goods. There are also those who mean everyone who uses goods or services.²²

Article 1 point 2 of the Consumer Protection Law states that "Consumers are every person using goods and / or services available in society, whether for the interests of themselves, their families, other people, or other living creatures and not for sale".

Article 2 of the Consumer Protection Law and its explanation stipulates that consumer protection is carried out based on 5 principles relevant to national development as follows:²³

- a. The principle of benefit, which means that all efforts in carrying out consumer protection must provide the maximum benefit for the benefit of consumers and business actors as a whole.
- b. The principle of justice, the intention is that the participation of all people can be realized maximally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.

20. Regulation of the Minister of Finance Number 130/PMK.010/2012.

21. *Ibid.*

22. Abdul Hakim Barkatulah, *Consumer Protection Law Theoretical Studies and Thought Development*, Nusa Media, Bandung, 2008, p. 7. See too Anis Mashdurohaturun & Nilna Kamaliya, Legal Protection Of Consumer Reviews In Social Media Based On Local Wisdom Values, *International Journal of Advanced Science and Technology* Vol. 29, No. 6, (2020), pp.1511

23. Ahmadi Miru, Sutarman Yodo, *Consumer Protection Law*, Raja Grafindo Persada, Jakarta, 2007, pp. 25-26.

- c. The principle of balance, which is intended to provide a balance between the interests of consumers, business actors and the government in a material and spiritual sense.
- d. The principle of security and consumer safety, the purpose of which is to guarantee security and safety to consumers in the use, use, and utilization of goods and / or services consumed or used.
- e. The principle of legal certainty means that businesses and consumers obey the law and obtain justice in carrying out consumer protection, as well as the state guarantees legal certainty.

Financing agreements with fiduciary transfer of property rights are made by agreement between the finance company and the consumer. The contents of the agreement are in the form of standard clauses which are terms or conditions that are made unilaterally by the financing company and are set out in a binding agreement document and must be fulfilled by the consumer. So that the position of consumers is weak because they have to follow all the provisions made by the finance company. Therefore, it is necessary to protect consumers.²⁴ This is contrary to Article 4 (c) of Law Number 8 of 1999 concerning Consumer Protection, that consumers have the right to correct, clear, and honest information regarding the condition and guarantee of goods and / or services.

Financing agreements between finance companies and consumers only benefit the company regardless of the consumer. In practice, if the consumer does not pay for three months, the finance company can take it by force. Actually, the consumer has signed an agreement with the finance company as the legal owner of the goods, but the payment is on credit. This is contrary to Article 18 paragraph (1) letter d of Law Number 8 of 1999 concerning Consumer Protection, which states that business actors in offering goods or services intended for trade are prohibited from including standard clauses in every document or agreement if it states that the power of attorney from consumers to business actors, either directly or indirectly, to take any unilateral action relating to goods purchased by consumers in installments.²⁵

If there is a dispute between a consumer and a business actor, there is actually a Consumer Dispute Resolution Agency (BPSK) that can act as a mediator between the two parties. However, in general the existence of this agency is not widely known by consumers. The existence of this agency which is known to the financing institution is not utilized and the financing institution does not inform consumers. Then the efforts to sue the financial institutions by consumers seemed impossible because of cost constraints.

The Consumer Dispute Resolution Agency (BPSK) is an agency in charge of handling and settling disputes between business actors and consumers. BPSK members consist of elements from the government, consumers, and business actors. Each element totals at least 3 (three) people and a maximum of 5 (five) people. The appointment and dismissal of BPSK members is determined by the Minister of Industry and Trade.²⁶

Implementation of Duties and Authorities of BPSK states that the application for consumer dispute resolution must contain correct and complete information regarding: 1) Full name and address of consumers, their heirs or proxies accompanied by proof of identity; 2) The name and complete address of the business actor; 3) The goods or services being complained of; 4) Proof of acquisition (receipts, invoices, receipts and other proof documents); 5) Information on the place, time and date the goods or services were obtained; 6) Witness who knows the goods or services were obtained; and 7) Photos of goods and implementation activities (if any). The resolution of consumer disputes at BPSK is not tiered. The parties are free to choose

24. Greity Silvana J. Weku, Legal Protection for Consumers of Financing Institutions (Leasing) for Forced Taking of Credit Guarantee Objects, *Lex Privatum* Vol. VII / No. 6 / Jul-Sep / 2019, pp. 91-99

25. *Ibid.*

26. Zulham, *Consumer Protection Law*, Kencana Prenada Media, Jakarta, 2013, p. 143

the preferred method of dispute resolution, can use mediation, conciliation, and arbitration. After the parties agree on what method to use, the parties must follow it. After consumers and business actors reach an agreement to choose one of the 3 (three) ways of resolving consumer disputes at BPSK, the BPSK assembly is obliged to handle and resolve consumer disputes according to the available options.²⁷

If the parties have chosen the conciliation method or the mediation method and the settlement process fails or an agreement is not reached regarding the form or amount of compensation, the parties or the BPSK panel are prohibited from continuing the settlement by way of conciliation or arbitration. The solution can then be done through general courts. BPSK is an out-of-court consumer dispute settlement agency, so BPSK says statutory regulations have been separated from the scope of the judiciary. However, in fact, certain articles in the UUPK still provide a liaison with the judiciary. So that it cannot be separated from the general justice system, both civil and criminal.²⁸

Consumer dispute resolution is carried out in the form of an assembly. This means that consumer disputes are examined and decided by the BPSK assembly with at least 3 (three) BPSK members as an assembly assisted by a clerk. In other words, an examination of a consumer case is similar to an examination conducted by a judge in court. Therefore, this BPSK can be called a moot court (quasi-judiciary). The decision given by the BPSK panel in this consumer dispute is final (*in kracht van gewijsde*), binding, and cannot be appealed again. This means that BPSK is a consumer dispute resolution institution in the first and last levels. This is ideal because as an intermediary body (mediator, arbitrator or conciliator) it is hoped that the decisions will contain elements of peace. So that there is no need to argue again by one of the disputing parties so that this decision is final. It must be taken as objectively as possible in accordance with the law and satisfying for both parties to the dispute.²⁹

Avoiding a protracted dispute resolution process, the Consumer Protection Law provides limits to BPSK. After the lawsuit is received, BPSK is obliged to issue a decision no later than 21 (twenty one) working days. This provision is considered very important for consumers considering the economic position and bargaining power of consumers are under business actors. Through a dispute resolution process with a short period of time, this is very beneficial for consumers in order to avoid cost overruns. This includes business actors who generally prefer to settle disputes with a short period of time. This is closely related to business issues that require time and business acceleration. BPSK's own authority is very limited. The scope of the dispute that is entitled to be handled includes only violations of Article 19 Paragraph (2), Article 20, Article 25, and Article 26. The sanctions imposed are only in the form of administrative sanctions. The meaning of administrative sanctions here has been influenced by the common law system, so that it can be in the form of determination of compensation in accordance with the provisions of Article 60 of the Company Law. Violation of other articles which are criminal in nature is the full authority of the Court. Violations that fall into this category are violations of the inclusion of standard classes, even though the supervision of the inclusion of standard classes is part of the duties of BPSK.³⁰

2. The Weaknesses of BPSK in Consumer Dispute Resolution

Study of the legal arrangements for consumer dispute resolution as regulated in Law No. 8 of 1999 concerning consumer protection and related to other related laws and regulations found several legal limitations. For example, BPSK is not constructed as a judicial body so it does not have legal certainty and

27. Susanti Adi Nugroho, *The Process of Settling Consumer Disputes in terms of Procedural Law and Implementation Constraints*, Prenada Kencana, Jakarta, 2008 p. 155

28. *Ibid.*

29. Janus Sinabalok, *Op.Cit.*, p.188

30. Shidarta, *Indonesian Consumer Protection Law*, Gramedia Widiasarana Indonesia, Jakarta, 2004, p. 180.

BPSK decisions are not final. Some of the limitations of legal capacity are described as follows:

1. Institutional Position of BPSK

BPSK institutional obstacles are still a very urgent problem. The existence of BPSK, which is only active in a few cities, suggests that until now the government (central and local) has not seriously addressed the issue of consumer protection. A number of theoretical problems with the existence of BPSK in resolving consumer disputes have not all been identified. There are several arguments which state that BPSK is not a body that carries out a full judicial function. BPSK resolves the dispute process by means of mediation,³¹ conciliation and arbitration where these three methods are essentially non-litigation dispute resolution options. Structurally, BPSK is under the Ministry of Trade. In carrying out its duties, executive authority is still attached so that indirectly it opens up the possibility of obstacles in carrying out its judicial duties. Law Number 8 Year 1999 positions BPSK as an agency that has the authority to examine and decide. However, this was not accompanied by a device to implement the decision. It can be concluded that BPSK is not a body that has a judicial function. Therefore, in some areas, business actors who were defeated in a consumer dispute decided by BPSK, filed an objection to the district court and even BPSK in this lawsuit was made the defendant.

There are weaknesses in the regulation of BPSK in the UUPK as a consumer dispute resolution body, so the appropriate construction to occupy BPSK is as a special judicial institution. This is based on the decision to be final and binding. But if the disputing parties object to the decision, BPSK can still file an appeal and cassation through the general court. Therefore, the reconstruction of the position of BPSK as the Dispute Resolution Body needs to be confirmed.³²

2. Funding Constraints

Operational costs are borne by the Regional Revenue and Expenditure Budget, so the support from the Regional Government regarding readiness of allocations from the Regional Revenue and Expenditure Budget in several cities is still minimal. This affects the performance of the Consumer Dispute Resolution Agency.

3. Human Resources Constraints

BPSK members consist of 3 (three) elements, namely elements of government, elements of consumers, and elements of business actors. The representation of this element by law is intended to show public participation in consumer protection efforts and to show that consumer protection is a shared responsibility between the government and society. The division of BPSK members into these three elements is related to the concept of balance between the disputing parties and the interests of the government which positions itself as a neutral party in policy makers. At least 1/3 (one third) of the BPSK members must have a legal education background. This is important because BPSK is a government-formed body whose main task is to carry out court functions. The process of appointing BPSK members creates problems of its own. This is because in fact the appointment of BPSK members emphasizes the representation of the consumer elements of business actors and the government, rather than the competence of members in managing and resolving disputes. So that there are several BPSK members who do not master the subject matter of disputes between business actors and consumers. BPSK members from government elements recruited from agency representatives are familiar with the government bureaucracy system. This could hamper the process of BPSK becoming an independent institution. The culture of superiors and subordinates in the government bureaucracy that is often

31. Sri Endah Wahyuningsih, Risto Samodra, Dwi Wahyono, *The Implementation Of Restorative Justice In The Traffic Crime Investigation Procedures In Central Java Indonesia Based On Justice Value*, Man In India, 97 (24) , Serials Publications, P.98.

32. Tami Rusli, Limitations of Consumer Dispute Resolution Bodies in Settling Consumer Disputes, *Legal Matters*, Volume 43 No. 2, April 2014, pp. 233-239

carried away in BPSK can become a psychological burden internally between BPSK members from the government and members of the BPSK secretariat, and externally with their respective superiors. Based on the resources of BPSK members, it is one of the supporting factors for the optimization of BPSK. Because no matter how good the concept of forming an institution is, if it is not supported by competent human resources, then the existence of the institution will be far from expectations.

4. Regulatory Constraints

The Consumer Protection Law which is expected to be a weapon for justice seekers, in its implementation is still difficult to implement and faces various obstacles. This is because the legal provisions are not as expected, such as for the fast, simple, and low cost resolution of consumer disputes. The UUPK does not provide sufficient technical instructions or guidelines or explanations. In fact, there is a conflict between one article and another, both with the rules of procedure used so far, as well as conflicts with other regulations so that legal certainty is difficult to achieve. Moreover, there are regulations that are not consistent from a procedural perspective. There are several weaknesses in the regulation, especially regarding the procedure for proceeding at BPSK, with the standard forms for proceeding at BPSK not yet standardized.

5. Lack of socialization to the community

The low level of consumer awareness of their rights is due to the lack of UUPK socialization. In general, consumers do not know and understand about the existence of the UUPK. Another factor that determines the low level of consumer legal awareness is the legal culture of Indonesian society. Legal culture is the adopted value that influences the attitude of the community members, including their behavior in the legal field. Indonesian society is a very strong society trying to maintain harmony in the relationship between consumers and business actors. This greatly affects attitudes and actions in the legal field. Indonesian people tend to always want to maintain harmony, and avoid conflict and being permissive. This causes consumers to be reluctant to claim their rights when they feel that they have been disadvantaged by consuming a product, especially if the value of the loss experienced is of little value. The low level of consumer confidence in consumer protection and a permissive attitude has an impact on consumer awareness.

D. Conclusion

The fiduciary dispute resolution mechanism through the consumer dispute settlement agency (BPSK) can conclude that consumer disputes are carried out in the form of an assembly. This means that consumer disputes are examined and decided by the BPSK assembly, with at least 3 (three) BPSK members as an assembly assisted by a clerk. In other words, an examination of a consumer case is similar to an examination conducted by a judge in court. Therefore, this BPSK can be called a moot court (quasi-judiciary). The decision given by the BPSK panel in this consumer dispute is final (in kracht van gewijsde), binding, and cannot be appealed again. Efforts to resolve consumer disputes through BPSK face problems including: the task is too complex because it functions as a consumer dispute resolution institution and includes guidance and supervision. There is an absence of strict rules regarding budget allocation, lack of human resources for BPSK members, and low legal awareness of consumers and business actors.

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