

# Effectiveness of Consumer Dispute Resolution Mechanism Through the Indonesian Consumer Resolution Agency (BPSK)

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Study This aiming For analyze effectiveness mechanism settlement dispute consumer through the settlement body Consumers (BPSK) Indonesia. Research This use method study law bibliography, namely research conducted with method researching ingredients library or secondary data. Research This aiming For give understanding deep about phenomenon certain without do research field. Settlement Agency Dispute Consumers (BPSK) have role crucial in provide mechanism settlement dispute consumers outside court, through three method main : conciliation, mediation, and arbitration. Conciliation nature passive, where the assembly only facilitate agreement of the parties which then poured out in agreement peace. In overall, although BPSK was designed For give justice for consumers, various constraint structural, source power, and especially inconsistency regulation related strength law the verdict hinder effectiveness and certainty the law.

**Keywords:** BPSK, Mediation, Conciliation, and Arbitration

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## 1. Introduction

Legal protection for consumers is a significant issue, the first is the increasing global competition. With the tight competition and many existing service products, legal protection is the most important thing so that consumers are not in a vulnerable position. Legal protection for consumers is given through intervention government.

The importance of regulating legal protection for consumers in a country is usually based on considerations of relevance and urgent needs. In terms of relevance, this legal protection must be enforced by the government based on applicable conditions and those that may occur for consumer welfare. This is important because the law is the only one that can encourage business actors to comply with it, and it also has clear sanctions. Given the significant effects that can arise from the behavior of irresponsible business actors who prioritize their own profits, the government has a responsibility to protect the rights of consumers who are in a weak position. Therefore, enforcement of consumer protection is usually carried out by considering these conditions.

- a. The level of development of each country;
- b. Industrial and technological growth;
- c. Development philosophy and policy.

In providing legal protection for consumers by means of state intervention to protect consumer rights in the form of legislation. Against the weak bargaining position, it must be protected by law. This is because one

Effectiveness of Consumer Dispute Resolution Mechanism Through the Indonesian Consumer Resolution Agency (BPSK). Nursyahfitri, et.al

of the characteristics and objectives of law is to provide protection to the community. Legal protection for the community must be realized in the form of legal certainty which becomes right consumers. (Rahman, 2018)

## 2. Research Methods

This study uses a library legal research method, namely research conducted by examining library materials or secondary data. The data sources used include primary data such as the Criminal Code and secondary data in the form of draft laws, research results, and legal expert opinions. Data collection techniques are carried out through literature studies by collecting data from various written reading sources. Data analysis is carried out using qualitative data analysis techniques to process research data into a systematic and rational report.

## 3. Results And Discussion

### Dispute Resolution Procedure Through BPSK

#### Conciliation

Conciliation is an effort to resolve consumer disputes by bringing together both parties and in the settlement process a neutral third party will be present as a conciliator but is passive in nature, meaning that it is only tasked with answering questions from consumers or business actors in dispute regarding legislation or others. In accordance with what is described in Article 29 of the Minister of Trade Decree Number 350/MPP/KEP/12/2001 concerning the procedures for resolving consumer disputes through the conciliation process, namely:

- a. The Assembly fully hands over the consumer dispute resolution process to the parties, namely consumers and business actors, to resolve their disputes.
- b. The assembly as a neutral third party is only passive when acting as a conciliator.
- c. After the conciliation process is completed, the assembly accepts the results of the conciliation and makes a decision in the form of determination (Suherman & Shinta Dwi Enggraini, 2022) .

It was obtained data or information that some disputes can be resolved at the pre-trial stage. If it is not resolved at this pre-trial stage, the settlement can also be carried out by the parties themselves outside the BPSK. In other words, the parties can resolve it themselves before the conciliatory panel hearing is held.

In fact, every successful dispute resolution through conciliation is stated in a peace agreement and the determination of the BPSK Council with a conciliation decision to strengthen the agreement of the parties and prevent further complaints from consumers against business actors.

In the process of resolving consumer disputes through conciliation that often occurs, the consumer and business actors who have made an agreement outside the BPSK and do not report the results of the agreement to the BPSK Assembly, so that the BPSK does not know the results of the agreement that has been made by the consumer and business actors. This is an exception to the procedures that have been determined by the BPSK which should not have happened, because the parties should have been emphasized that every agreement obtained outside the trial must be reported to the BPSK for certainty. law (Sudarsono, 2022) .

#### Mediation

Implementation of Mediation as an effort to resolve disputes between the parties at BPSK according to its provisions is carried out based on the free choice of the parties. Interestingly, the implementation of mediation at BPSK is largely not a free choice purely chosen by the parties, but is a choice directed by the

Effectiveness of Consumer Dispute Resolution Mechanism Through the Indonesian Consumer Resolution Agency (BPSK). Nursyahfitri, et.al

BPSK panel towards the parties. The directive efforts by the BPSK assembly tend to give the impression of intervention through one-by-one dialogues carried out by the BPSK assembly for the parties to choose (directed to choose) mediation as an effort to resolve disputes between the parties. The BPSK Council is of the opinion that the results of the mediation decision can equalize the position of consumers who were previously in a weak position with the position of business actors. Implementation mediation at BPSK is assisted by the BPSK assembly, namely by three mediators from government elements, business actors and consumers. In conducting mediation at BPSK, there is no provision that requires mediation to be assisted by a licensed mediator, so that the implementation of mediation at BPSK is carried out by mediators who are not or are not licensed. The time period for resolving disputes through mediation efforts at BPSK always exceeds the provision limit, namely 21 (twenty-one) days. This time is declared inadequate for the success of mediation, while the BPSK assembly is committed that every case that is pursued through mediation efforts must be successful even if it exceeds the time settlement according to the rules.

Mediation as one way to resolve consumer disputes is able to provide good results, in the sense that mediation as a conscious choice of the parties is able to provide a win-win solution. Mediation needs to be made a mandatory choice in resolving consumer disputes, although this is still being debated, but at least the results of the study show that mediation in resolving consumer disputes resolves and mediators are able to resolve issues between business actors and consumers. For this reason, the government needs to review existing regulations and place consumer dispute resolution through mediation efforts as choice must (Jusari, 2019) .

Mediation means being in the middle, the meaning of being in the middle refers to the role of the mediator who is the third party in handling a problem in the middle of the parties who have a case. The mediator must have a neutral attitude in resolving consumer disputes and maintaining the interests of the parties so that it can create a sense of trust between the parties. Mediation does not provide a model that can be described in detail and distinguished from other decision-making processes.

The achievement of mediation can be realized to achieve a target by having a goal based on good faith between the parties by finding a middle ground, namely a peace agreed upon by the parties. An agreement occurs if the parties can set aside their desire to make a settlement in the district court and only agree to the results of the mediation, namely in the form of a peace deed that has been agreed upon by both parties. BPSK has the power of execution, its decision must go through the determination of the execution of the fiat execution in the district court. If the parties in the case are not satisfied with the results of the mediation or have a point of view but want to make a settlement outside the court, then they can done through arbitration (Rosaria & Marpaung, 2022) .

### **Arbitration**

The procedure for resolving consumer disputes outside the court through arbitration, its implementation is different from conciliation or mediation, through this method the Assembly acts actively to reconcile the disputing parties if no agreement is reached. Basically, arbitration is a method of resolving disputes outside the courts, based on an arbitration agreement made by the parties, and carried out by an arbitrator who is selected and given the authority to make decisions. Arbitration is the most attractive option, especially for business people. In fact, arbitration is considered an independent "business court" to resolve disputes according to their wishes and needs. BPSK itself is a non-structural institution located in all cities and districts, with the main objective of resolving all problems that occur between consumers and business actors without involving the courts. The basic principles of settlement carried out at BPSK are in accordance with with the Directorate General of Consumer Protection and Commercial Regulations including resolving disputes through mediation, arbitration, or consolidation (Ananda et al., 2024) .

1. Support and Facility Limitations:

BPSK faces a shortage of human resources, technology, and infrastructure. Limited and poorly trained staff can affect the efficiency and quality of dispute resolution. Limited technology and internet connection also hamper the process of digitizing services. In addition, minimal physical facilities make it difficult to access and provide services to consumers.

2. Limitation of Authority:

BPSK does not have the power to force the parties to appear in a dispute. The absence of a business actor can slow down the process, although BPSK has the authority to decide a case without the presence of a business actor after two summonses in accordance with Article 36 of the Decree of the Minister of Trade and Industry No. 350/2001. The lack of active participation from one of the parties can also reduce the quality of case resolution.

3. Expert Limitations:

In cases that require technical or specific analysis, the BPSK assembly requires expert opinion. When it is not available, the decision-making process becomes hampered, especially in complex cases. (Manik, Sidabalok, & Suhardin, 2024).

## Dispute Resolution Stages

### a. Application

Application dispute submitted to the nearest BPSK, usually at the mother's office city regency or city. If the plaintiff No Can present Because sick, age continue, or has died, petition can submitted by proxy or expert his heirs, well in a way oral and also written. Application handed over to BPSK secretariat and will noted as well as given number registration. If not complete or outside BPSK's authority is in accordance with Decree of the Minister of Trade and Industry No. 350/MPP/Kep/12/2001, application Can rejected. If complete, BPSK calls perpetrator slowest effort three day after application approved.

### b. Trial

The trial stage that can be implemented by means of conciliation, mediation and arbitration, The parties can choose which dispute resolution method will be used in resolving their problems. Whether using a court process or an out-of-court process. If the parties have agreed to choose the dispute resolution process to be used, then the parties are required to follow this choice. If the parties agree to choose dispute resolution through BPSK, then the BPSK assembly is required to handle and resolve consumer disputes in accordance with choice of the parties (Rimanda, 2019) .

### c. Decision

The BPSK decision is a final decision and has permanent legal force. For BPSK's actions, an execution order is requested by BPSK to the district court in the place where the consumer is harmed. Execution or implementation already means that the defeated party does not want to comply with the decision voluntarily, so the decision must be forced on him with the help of legal force. 16 The execution order is also regulated in Article 7 of Perma Number 1 of 2006 concerning Procedures for Submitting Objections to Decisions of the Consumer Dispute Resolution Agency (BPSK) (Anik Tri Haryani, Sarjiyati, Yuni Purwati, 2020) .

### d. Execution

- 1) The BPSK execution stages begin with Aanmaning / warning to the execution applicant to voluntarily implement the BPSK decision (within 8 working days from the warning).
- 2) In order to issue a warning/Aanmaning against the Respondent for the execution, the Head of the District Court will issue an Aanmaning determination product, the contents of which will order the Clerk or if prevented, a Bailiff will be appointed to issue a summons to the Respondent for Execution on the day and date determined by the Head of the District Court.

- 3) Based on the Aanmaning determination issued by the Head of the District Court, the Bailiff will issue a summons to the Respondent for execution on the day and date determined by the Head. The District Court (Putranto, 2019) .

### **Obstacles and Constraints in the Implementation of BPSK Duties**

The difficulty implementation Constitution Consumer Protection (UUPK), which is expected to be a “weapon” for consumers seeking justice, is caused by several factors. Its legal provisions are considered not to meet the expectations for resolving consumer disputes quickly, simply, and cheaply. In addition, UUPK shows inconsistencies between articles and conflicts, even horizontal conflict with product other legislation.

Following is a number of confusing obstacles and problems in implementation :

#### **a. Funding Constraints**

Funding can influence performance of the Consumer Dispute Resolution Agency (BPSK). In 2002, BPSK still received a budget from the State Budget (APBN). However, in 2003, the funding was no longer available and was allocated to local governments through the APBD. In reality, local governments, both districts and cities, did not include BPSK operational funds in the APBD. Given that regional autonomy has not yet run smoothly, several BPSKs have not receive operational funds.

The Department of Industry and Trade ( Deperindag ) has submitting BPSK operational funds to the Ministry of Finance, but the funds were requested to be transferred to the general allocation fund (DAU). For the development of BPSK human resources, the Ministry of Industry and Trade has conducted training in stages with limited funding sources. As a consequence, because the cost of implementing BPSK is not only borne by the APBN, but also the APBD, and in line with the spirit of regional autonomy, starting in the 2003 budget year, all costs implementation of BPSK is charged to the APBD.

#### **b. BPSK Human Resources Constraints**

BPSK members consist of three elements, namely government elements, consumer elements, and business actors. The representation of these elements by law is intended to show community participation in consumer protection efforts and to show that consumer protection is the responsibility of answer together between government and society.

Each BPSK has at least 9 to 15 members, adjusted to the volume and workload of BPSK, consisting of three element the in a way balanced, namely :

- 1) Element government originating from from representatives of agencies whose scope of duties includes industry, trade, health, mining, agriculture, forestry, transportation and finance.
- 2) Element perpetrator business originating from from association or business organizations in the region city or area regency local.
- 3) Element consumers who come from from LPKSM which is registered and recognized by the mayor or regent or head service local.

Distribution BPSK members into three elements are related to the concept of balancing the interests of the disputing parties (consumers vs business actors) and the interests of the government which positions itself as neutral party in taking policy.

At least 1/3 of 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 the functions of a court. However, the process of appointing BPSK members raises its own problems, because in reality the appointment of BPSK members emphasizes the representation of elements rather than the competence of members in managing and resolving disputes. As a result, many BPSK members do not master the main material dispute between perpetrator businesses and consumers.

#### **c. Competence and Professionalism Constraints Member of BPSK.**

The law does not explicitly limit the qualifications of government elements in BPSK membership, so that it sometimes involves less relevant agencies, such as the city beautification agency. Government representation should be adjusted to the competencies that support BPSK's duties. Differences in background between members—critical and idealistic consumer elements, and pragmatic business actors—often trigger differences in views in responding to consumer protection and the law, thus hindering dispute resolution. In addition, because the majority of members come from established backgrounds, BPSK's duties are only a side job, not full-time, which makes coordination difficult. Age requirements are also an obstacle, because young, experienced candidates can be sidelined due to the high age limit. This problem is exacerbated by the low professionalism of BPSK human resources who need to improve their competence in resolving consumer disputes:

- 1) Not all BPSK members have adequate legal education background. Even those who are educated in law often do not understand the aspects of consumer protection and technical dispute resolution. For example, in BPSK Tangerang Regency, out of 9 members, only 3 have a legal background, the rest educated bachelor education, economics, and engineering.
- 2) Member The BPSK secretariat that handles consumer complaints almost all do not have the knowledge and skills in the field of judicial administration. A secretariat at the Tangerang Regency BPSK admitted that he did not understand BPSK administration because his educational background was technique, and he Study in a way autodidact.
- 3) Lack of means education and training to build the professionalism of BPSK members and secretariat, both organized by the Ministry of Industry and Trade, universities high, LPKSM, and BPSK Alone.
- 4) The low interest Study independent from the members and secretariat of BPSK.
- 5) Lack of infrastructure support For professionalism, such as computers, courtrooms /consultation rooms, and libraries. For example, BPSK Tangerang Regency does not yet have a special library room.

Lack of professionalism members and secretariat of BPSK has an impact on the low quality of service to parties who entrust their disputes to BPSK. If left alone, BPSK will not be effective and will be abandoned by the community. This professionalism is also closely related to the existence of professional standards for Mediators/Conciliators which must own certificate from Supreme Court.

The existence of BPSK has also not been fully recognized and anticipated by the judicial institution. Many judges in the district court are not yet aware of the formation of BPSK in their area. As a result, in several courts, BPSK decisions cannot be registered for execution in the district court. Such as the case of BPSK Tangerang Regency which was asked for its legal basis by the district court when submitting a request for execution of the BPSK decision, showing that the court itself Still not enough understand provision about UUPK.

Likewise, regarding the BPSK decision which was appealed to the Supreme Court after going through the objection process in the district court, the Supreme Court did not carry out its obligations in accordance with the provisions of the time limit for issuing a decision as required by UUPK (Nurhayati, 2020) .

### **Inconsistency of Final and Binding Nature BPSK Decision in Settlement Dispute Consumer**

Settlement Agency Dispute Consumers (BPSK) are expected to realize justice, especially for consumers who feel disadvantaged. This is because the BPSK decision is final and binding, so it does not need to be submitted to court. However, in practice, the purpose This hampered by various problem. Point BPSK's weakness lies in the fact that the verdict An objection can still be filed to the district court by the dissatisfied

party, although the basic principle is that the BPSK decision is final and binding. BPSK was formed to resolve consumer disputes with small claims, so that should the verdict direct powerful law still.

a. Conflict Between Articles in Constitution Protection Consumers (UUPK)

Article 54 paragraph (3) of the UUPK and Article 42 paragraph (1) of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 expressly state that the decision of the BPSK panel is final and binding, and there is no appeal. However, Article 56 paragraph (2) of the UUPK actually opens up the opportunity to file an "objection" to the district court after the BPSK decision has been notified. This contradiction raises the problem of legal certainty and has the potential to weaken the motivation of the parties. For finish dispute outside court.

The provision that allows for the submission of objections to BPSK decisions to the District Court, and then cassation to the Supreme Court if the District Court's decision is not satisfactory, effectively "cancels the final and binding nature" of BPSK decisions. This shows an internal contradiction in the UUPK, which ultimately makes BPSK decisions feel meaningless. In fact, non-litigation dispute resolution aims to reduce the backlog of cases and speed up the process, in line with the principles of simple, cheap, and fast justice.

b. The Ambiguity of " Objection Efforts " and Its Impact on Practice Justice

Currently, there are disparity court decisions on consumer disputes which are an attempt to object to BPSK decisions. This lack of consistency is caused by the UUPK which does not regulate or provide technical instructions regarding What do you mean with " efforts object."

UUPK does not in a way limited confirm room scope object against the BPSK decision. In judicial practice, the implementation of this legal instrument of objection is very confusing and gives rise to various perceptions and interpretations, especially for judges and the judicial institution itself. This is because the terminology of "objection" is not known in the existing legal system. Questions arise as to whether an objection must be submitted in a lawsuit, resistance, or application, and whether the BPSK needs to be sued so that its statements can be heard directly. For the court, this also creates problems because submission object No has a special register.

It must be admitted that this UUPK ignores provisions relating to the judicial institution. The regulation of the role of the judicial institution is not clearly regulated, even though the regulation has important legal implications.

c. Classification of Cases Courts and Their Relations with BPSK's Objection

Completion a the case filed to court can be divided into:

- 1) Jurisdictio Voluntaria: There is no dispute, only requesting a judge's decision for legal certainty (for example, determining heirs, changing names).
- 2) Jurisdictio Contentiosa: There is a dispute that cannot be resolved by the parties themselves, so a request is made to the judge to... completed in a way fair and given verdict.

Notice difference the authority above, there are 3 forms Judge's decision :

- a) Decision Declaratory : Explaining or confirm a condition law (for example, determining heirs).
- b) Condemnatoir Verdict: Contains a sentence.
- c) Constitutive Decision: Abolishes or creates a legal state new ( for example, a decision divorce, bankruptcy ).

Based on difference the authority and form of this decision, it can be concluded that the objection to the BPSK decision submitted to the district court falls under Jurisdictio Contentiosa, because there are matters in dispute between consumers and business actors, who request a decision of a condemnatoir nature (punishment or awarding of compensation).

d. Interpretation of " Objection Effort " as Appeal

Appear question whether effort the objections referred to in Article 56 paragraph (2) UUPK in conjunction with Article 41 paragraph (3) of the Decree of the Minister of Trade and Industry No. 350/MPP/Kep/12/2001 can be interpreted as lawsuit new or resistance.

Although the term " objection " is not common in applicable procedural law, if linked to the provision that the district court that receives the objection must issue its decision within a maximum of 21 days, then the objection submitted by the party rejecting the BPSK decision must... interpreted as effort appellate law.

legal remedy for appeal is the legal means to submit a case to a higher court for examination repeat on decision court level First.

When the parties has chosen to resolve the dispute in BPSK by means of arbitration, then legally, the BPSK decision must be viewed as a decision of the arbitration body. Therefore, objections to the BPSK decision must be reviewed in the context of objections to the decision of the arbitration institution, so that its application must pay attention to the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Completion Disputes Outside Court.

If the parties Already choose consumer dispute resolution through BPSK by way of arbitration, this is an agreement to remove the court's authority in resolving disputes that arise, and completely in a way absolute become BPSK authority.

e. The Role of BPSK in the Legal Process

If effort object as Article 56 paragraph (2) of the UUPK is interpreted analogously as an appeal legal remedy, so all provisions related to the implementation of an appeal refer to the provisions of the procedural law applicable in the courts. general, especially civil procedure law.

Objection efforts submitted to the district court as an appeal, where everything is subject to the rules of civil procedure as regulated in Article 48 of the UUPK, meaning that the examination jurisdiction includes contentiosa jurisdiction, not voluntaria jurisdiction. Thus, the role of BPSK in this process is not as an institution that resolves disputes between parties in the case in the context of contentiosa jurisdiction, but rather includes voluntaria jurisdiction. BPSK is a government institution tasked with handling and resolving disputes between consumers and business actors, so it is not appropriate if BPSK is included as disputing parties.

If the settings regarding the finality and bindingness of the BPSK decision being overturned by the general court, in line with Gustav Radbruch's theory of the purpose of law, then the BPSK decision becomes meaningless. This will create uncertainty, uselessness, and injustice. An uncertain law is a useless law, and an uncertain law will certainly create injustice. This shows that the law that governs settlement dispute consumer through BPSK has limitations ability (Rusli).

#### 4. Conclusion

BPSK plays an important role in resolving consumer disputes outside the court through conciliation, mediation, and arbitration. However, its implementation still faces various obstacles, such as minimal funding from the APBD, weak quality of human resources due to recruitment based on representation rather than competence, and limited authority in presenting parties and access to experts. The most significant obstacle is the inconsistency of regulations related to the legal force of BPSK decisions. Although Article 54 paragraph (3) of the UUPK states that BPSK decisions are final and binding, Article 56 paragraph (2) actually opens up room for objections to the court, which has the potential to lead to cassation. This creates legal uncertainty and weakens BPSK's function as a fast and inexpensive dispute resolution institution. To optimize BPSK's role, it is necessary to review regulations, strengthen human resources, provide adequate budget support, and affirm the final nature of its decisions.

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