

## CONSUMER PROTECTION AGAINST FINAL DECISIONS OF THE CONSUMER DISPUTE SETTLEMENT BODY IS A QUASI-COURT

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### ABSTRACT

The position of the Consumer Dispute Settlement Body in the judicial power law is not as a court institution but carries out an adjudicating function called a Quasi Court with resolution through mediation, conciliation, and arbitration, the decisions of which are final and binding. The formulation of the problem in this paper is: Why is legal protection needed for consumers as a Quasi Court from the Final Decision of the Consumer Dispute Settlement Agency (BPSK)? Meanwhile, the method used in this research is the normative method, using a statutory and analytical approach, then the legal materials used are primary, secondary, and tertiary legal materials. Consumers are weaker in existence than business actors, because business actors often carry out actions that can harm consumers to gain profits, therefore consumers need to receive legal protection, even though UUPK has been formed to resolve disputes through the Consumer Dispute Resolution Agency (BPSK), but the BPSK decision which is final and binding has not been fully implemented consistently as stated in the Consumer Protection Law (UUPK), because there is still an opportunity to submit objections for parties who object to the BPSK decision.

**Keywords:** *Consumer Protection, BPSK Decision, Court Quasa*

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### INTRODUCTION

Every person at any time, in a single position or a group with other people, under any circumstances, must have been a consumer of a particular product or service. This universal situation, on several sides, shows the existence of various weaknesses on the part of consumers so that they do not have a "safe" position. Therefore, consumers also need universal legal protection. Considering the weak position of consumers in general compared to the relatively stronger position of producers in many respects, the discussion of consumer protection dispute resolution will always feel current and important to review (Siwi K, 2022).

Consumers whose existence is unlimited with very varied strata cause producers to carry out marketing and distribution activities for goods or services as effectively as possible to reach these very diverse consumers. For this reason, all approaches are attempted to cause as few impacts as possible, including situations that lead to negative or even dishonorable actions that originate from bad intentions. Negative impacts that commonly occur include, among other things, regarding the quality of goods, unclear or even misleading information, forgery, fraud, and so on (Siwi K, 2022).

In addition, globalization and free trade, supported by advances in technology and information technology, have expanded the space for the flow of goods and services transactions across a country's territorial boundaries so that the goods and services offered vary, both foreign products and domestic products. On the one hand, this condition has benefits for consumers because consumers' needs for desired goods and services can be fulfilled and there is greater freedom to choose various types of quality goods and services according to consumers' desires and abilities. On the other hand, the conditions and phenomena mentioned

above can result in the position of business actors and consumers becoming unbalanced and consumers being in a weak position. Consumers become the object of business activities to obtain maximum profits by business actors through promotional tips, sales methods, as well as the application of standard agreements or standard agreements that are detrimental to consumers "Currently consumers have to be increasingly careful in paying attention to the information conveyed through advertising, because We still find business actors who are dishonest and tend to use consumers only as objects (Firmansyah, 2018; Haditty et al., 2021).

The main factor that causes consumer interests to not be protected is that the level of consumer awareness of their rights is still low. This is mainly due to low consumer education. Therefore, the consumer protection law is intended to be a strong legal basis for the government and non-governmental consumer protection institutions to make efforts to empower consumers through consumer guidance and education. This empowerment effort is important because it is not easy to expect awareness from business actors, that the economic principle of business actors is to obtain the maximum possible profit with the minimum possible capital. This principle is very detrimental to the interests of consumers, both directly and indirectly.

Based on the conditions described above, it is necessary to empower consumers through the formation of laws that can protect consumer interests in an integrative and comprehensive manner and can be implemented effectively in society. Legal instruments that protect consumers are not intended to kill businesses, but on the contrary, consumer protection can encourage a healthy business climate that encourages the birth of companies that are strong in facing competition by providing quality goods and/or services (Nasution, 2017).

Regarding statutory regulations regarding consumer protection, researchers will analyze or relate them to the implementation of consumer protection dispute resolution based on the decision of the Consumer Dispute Resolution Agency (BPSK) where objections to articles in consumer protection regulations can be briefly explained as follows: The existence of legal uncertainty in Consumer Protection Law (UUPK) Number 8 of 1999 concerning consumer protection, especially in: Article 54 (3), briefly reads: the decision of the BPSK Council is Final and Binding. Meanwhile, Article 56 (2) opens up the opportunity for parties to a dispute to submit "objections" to the District Court and can even submit a cassation to the Supreme Court.

Apart from the General Court, several institutions in the law are expressly stated to carry out duties like a court, even though they are not explicitly a court, but have authority and working mechanisms that are also adjudicative in nature.

Based on Article 24 paragraph (3) of the 1945 Constitution, "Other bodies whose functions are related to judicial power are regulated by law." This is the basis for the emergence of new bodies related to judicial power to help carry out the main tasks of the main judicial institution. Therefore, these bodies are given the authority to examine and decide on disputes or cases of legal violations, and even cases of certain ethical violations with decisions that are final and binding, like court decisions that are "inkracht" in general. All of this is intended to provide justice for parties who are disadvantaged by a decision-making system that is in the name of state power.

## **METHOD**

### **Normative legal research approach**

This research uses normative legal research, and the approaches used include: first, the statutory approach; second, the analytical approach, referred to by Fiter Muhammad Marzuki (Tan, 2021). The approach used by the author in this research is as follows:

1. Legislative approach
2. Analysis approach

### **Types and sources of legal materials for normative legal research**

The legal materials used are (Sonata, 2015):

1. Primary legal materials, namely legal materials that have general binding force (legislation) or have binding force for interested parties (contracts, legal documents, BPSK/judge decisions)
2. Secondary legal materials, namely legal materials that provide explanations of primary legal materials (legal books, legal journals, legal reports, and print and electronic media)
3. Tertiary legal materials, namely legal materials that provide explanations of primary and secondary legal materials (draft laws, legal dictionaries, and encyclopedias) (Tan, 2022).

### **Techniques for collecting legal materials**

In this research, 2 types of secondary data collection methods were carried out, namely:

1. Literature review

Making laws, judge's decisions or jurisprudence, contracts or conventions, and legal journals.

Steps taken: identifying sources of legal materials through the library catalog or directly at the source; recording legal materials needed by researchers; analyzing the legal materials obtained by the problem and research objectives.

2. Document study

Study of written importation regarding the law. Document sources include: Making laws and regulations; interested parties; lawyers; and legal research (Tan, 2022).

### **Processing and analysis of legal materials**

The analysis used by the author in normative research is by interpreting the legal material that has been processed. The interpretation (interpretation) of law that will be used in this writing includes:

1. Grammatical interpretation or according to grammar, according to Peter Mahmud, explains the interpretation of the meaning of words in the law, namely the interpretation of the meaning of the words of the law.
2. Systematic interpretation, if a term is included more than once in one article or one law, then the meaning must be the same.
3. Contradictory interpretation, namely finding the opposite of a more precise understanding of a legal term (Tan, 2021).

Analysis of legal materials is carried out as an activity of providing a review which can mean opposing, criticizing, supporting, adding, or providing comments and then making a conclusion on the research results with one's thoughts with the help of the theory that has been used.

## **RESULTS AND DISCUSSION**

### **Legal Protection for Consumers as a Quasi Court from Final Decisions of the Consumer Dispute Resolution Agency (BPSK)**

#### ***Understanding Consumer Legal Protection***

Before understanding the meaning of consumer protection, the meaning of legal protection must first be explained. Satjipto Raharjo defines Legal Protection as protecting human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law (Maryanto, 2019).

CST Kansil believes that legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party (Maryanto, 2019).

The term consumer comes from linguists from the word consumer (English-American), or consumer/consumert (Dutch). The definition of consumer or consumer depends on the position in which he is located.

The meaning of the word consumer is "(the opposite of producer), everyone who uses goods." The purpose of using goods and services will determine which group of consumers the user belongs to. Likewise, the English-Indonesian dictionary gives the meaning of the word consumer as user or consumer (Nasution, 2017).

Consumer protection law or consumer law can be interpreted as all legal regulations that regulate the rights and obligations of consumers and producers that arise in their efforts to meet their needs (Zuhairi, 2016).

The scope of rights and obligations and ways to fulfill them in efforts to meet their needs, namely for consumers starting from efforts to obtain their needs from producers, includes; information, choosing, and prices to the consequences that arise due to the use of these needs, for example to obtain compensation for losses. Meanwhile, for producers, this includes obligations related to the production, storage, distribution, and trade of products, as well as the consequences of using the product.

If consumer protection is defined as all efforts that ensure the certainty of fulfilling consumer rights as a form of protection for consumers, then consumer protection law is a law that regulates efforts to ensure the realization of legal protection for consumer interests (Suwandono, 2020).

Consumer Protection is all efforts that guarantee legal certainty to protect consumers, then what is called A consumer is every person who uses goods and services available in society, whether for the benefit of themselves, their family, other people, or other living creatures, and not for trade. (article 1 part 1 of Law Number 8 of 1999) In the explanation of the UUPK article, it is explained in the economic literature that the terms final consumers and intermediate consumers are known. Final consumers are the final use or utilization of a product, while intermediate consumers are consumers who use a product as part of the production process of another product. The definition of consumer in the UUPK is the final consumer.

Consumer protection must receive more attention, because foreign investment has become part of Indonesia's development, at a time when the Indonesian economy is also linked to the world economy. International competition can have negative implications for consumers. Consumer protection is not only against low-quality goods but also against goods that endanger people's lives.

According to the Business English Dictionary, consumer protection is protecting consumers against unfair or illegal traders. Consumer protection is a term used to describe the legal protection given to consumers in their efforts to meet their needs from things that are detrimental to the consumers themselves.

Consumer protection has a broad scope, including consumer protection for goods and services, starting from the activity stage to obtain goods and services to the consequences of using these goods and services.

The scope of consumer protection can be differentiated into two aspects, namely: (Fadhila & Tricahyono, 2020; Kahfi, 2018) First, protection against the possibility that the goods handed over to consumers do not comply with what has been agreed upon; Second, protection against the imposition of unfair conditions on consumers.

The desire to achieve consumer protection is to create a sense of security for consumers in meeting their life needs. It is proven that all consumer protection norms in the consumer protection law have criminal sanctions.

All efforts intended to protect consumers are not only preventive measures but also repressive measures in all areas of protection provided to consumers. So consumer protection regulations are carried out by: (Fadhila & Tricahyono, 2020; Kahfi, 2018)

1. Creating a consumer protection system that contains elements of open access to information, as well as guaranteeing legal certainty.
2. Protect the interests of consumers in particular and the interests of all business actors.
3. Improve the quality of goods and services.
4. Protect consumers from deceptive and misleading business practices.
5. Integrate the implementation, development, and regulation of consumer protection with other areas of protection.

Consumer protection law is the totality of principles and rules that regulate and protect consumers in the relationships and issues of providing and using consumer products between providers and users, in social life. Strictly speaking, consumer protection law is all statutory regulations, both laws and other statutory regulations, as well as judge's decisions whose substance regulates the interests of consumers.

Consumer protection is very important because many consumers are harmed by unscrupulous business actors, so consumer protection is very necessary. Consumer rights are often ignored by business actors so consumers feel disadvantaged. According to UUPK no. 8 of 1999, consumers can submit this problem to the Consumer Dispute Resolution Agency (BPSK). The purpose of establishing BPSK is to protect consumers and entrepreneurs by designing a consumer protection system that contains legal certainty and transparency. BPSK is a special institution formed and regulated in the UUPK, whose main task is to resolve disputes/disputes between consumers and business actors outside of court (Maryanto, 2019).

### ***The decision of the Consumer Dispute Resolution Agency (BPSK) is the final***

The Consumer Dispute Resolution Agency is a body tasked with handling and resolving disputes between business actors and consumers. BPSK was formed by the government in level II regions to resolve disputes outside of court. As a body for resolving consumer disputes outside of court, BPSK's decisions are final and binding, without appeal or cassation (Fadhila & Tricahyono, 2020; Kahfi, 2018).

To avoid a protracted consumer dispute resolution process, the consumer protection law places limitations on BPSK. After the lawsuit is received, BPSK is obliged to issue a decision no later than 21 working days.

This provision is considered very important for consumers, considering that the economic position and bargaining power of consumers is below that of business actors. So going through a dispute resolution process within a short period is very beneficial for consumers to avoid cost overruns. Likewise, business actors are generally very interested in resolving disputes within a short period, this is closely related to business issues that require time and business acceleration.

The crucial article in implementing the BPSK decision is contained in article 56 of the Consumer Protection Law which reads: (Fadhila & Tricahyono, 2020; Kahfi, 2018)

1. Within 7 working days of receiving the decision of the consumer dispute resolution agency as intended in Article 55, business actors are obliged to implement the decision.
2. The parties may submit objections to the District Court no later than 14 working days after receiving notification of the decision.
3. Business actors who do not submit objections within the period as intended in paragraph 2 are deemed to accept the decision of the consumer dispute resolution body.
4. If the provisions as referred to in paragraphs 1 and 3 are not implemented by the business actor, the consumer dispute resolution body submits the decision to the investigator to investigate by the provisions of the applicable laws and regulations.
5. The decision of the consumer dispute resolution body as intended in paragraph 6 is sufficient preliminary evidence for investigators to carry out an investigation.

The ambiguous provisions of Article 56 paragraph 1 stipulate that the period for implementing a decision is no later than seven days, shorter than the period for filing objections as in Article 56 paragraph 2, namely 14 days at the latest, because business actors can't implement the BPSK decision if they feel objection to a BPSK decision, where the period for submitting an objection has not yet expired, namely 14 working days.

The provisions of article 56 paragraph 2 are a "rubber article" which opens up opportunities for parties to submit objections to BPSK decisions. Even though in the provisions of article 56 paragraph 3 it is stated that "the panel's decision is final and binding", in the explanation it is stated that what is meant by the panel's decision being final is that in BPSK there are no appeals or cassation efforts. Having the opportunity to submit an objection to the BPSK decision to the court has the same essence as an attempt to appeal the BPSK decision. both of them annul the final and binding nature of the arbitration award (which was carried out by BPSK).

### ***The BPSK decision is a quasi-court***

Apart from the General Court, several institutions in the law are expressly stated to carry out duties like a court, even though they are not explicitly a court, but have authority and working mechanisms that are also adjudicative in nature.

Based on Article 24 paragraph (3) of the 1945 Constitution, "Other bodies whose functions are related to judicial power are regulated by law." This is the basis for the emergence of new bodies related to judicial power to help carry out the main tasks of the main judicial institution. Therefore, these bodies are given the authority to examine and decide on disputes or cases of legal violations, and even cases of certain ethical violations with decisions that are final and

binding, like court decisions that are "inkracht" in general. All of this is intended to provide justice for parties who are disadvantaged by a decision-making system that is in the name of state power.

Six power criteria determine whether a state institution can be called a quasi-judicial institution (Alfian, 2019; Faisal Riza dan Rachmad Abduh, 2018). These include the following:

1. Power to provide judgment and consideration. (The power to exercise judgment and discretion);
2. The power to hear and determine or ascertain facts and to make decisions. (The power to hear and determine or to ascertain facts and decide);
3. The power to make binding orders and considerations that bind a legal subject with the decision and considerations made. (The power to make binding orders and judgments);
4. The power to influence individual rights or property rights. (The power to affect the personal or property rights of private persons);
5. The power to test witnesses, to compel witnesses to appear and to hear statements from the parties in the trial. (The power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing); And
6. Power to enforce decisions or impose punitive sanctions. (The power to enforce decisions or impose penalties).

The six powers or characteristics above can be used to help see whether a new institution is a quasi-judicial institution. Therefore, it is very important to use criteria to conclude that BPSK is a quasi-judicial institution.

### ***Consumer Dispute Resolution Agency (BPSK) is a Quasi-Judicial Institution in Indonesia***

The Consumer Dispute Resolution Agency functions as a quasi-judiciary, tasked with handling and resolving disputes between business actors and consumers (Astuti, 2016). The duties and authority of BPSK are regulated in Article 52 UUPK jo. Minister of Trade Decree No. 350/MPP/Kep/12/2001, Duties and authorities of consumer dispute resolution bodies include: (Yuanitasari & Kusmayanti, 2019)

1. Carry out handling and resolution of consumer disputes, using mediation-arbitration, or conciliation;
2. Providing consumer protection consultations;
3. Supervise the inclusion of standard clauses;
4. Report to the general investigator if there is a violation of the provisions of this Law;
5. Receive complaints, both written and unwritten, from consumers regarding violations of consumer protection;
6. Conduct research and examination of consumer protection disputes;
7. Summon business actors who are suspected of having committed violations of consumer protection;
8. Summon and present witnesses, expert witnesses, and/or anyone deemed to know about violations of this Law;
9. Request assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letters g and h, who is unwilling to comply with the summons of the consumer dispute resolution body;

10. Obtain, examine, and/or evaluate letters, documents, or other evidence for investigation and/or inspection;
11. Decide and determine whether or not there is any loss on the part of the consumer;
12. Notifying business actors who violate consumer protection;
13. Imposing administrative sanctions on business actors who violate the provisions of this Law.

Observing the provisions above regarding BPSK, it can be seen that its duties and authority are the duties of judicial institutions, namely the task of examining, deciding, and adjudicating cases by applying the law and/or finding the law "in concreto" (judges apply legal regulations to real matters who are presented to him for trial and decision) to maintain and guarantee compliance with material law, using procedural methods established by formal law. However, in the judicial system, the position of BPSK is not as a judicial institution which can be categorized as the main judicial institution according to Law no. 48 of 2009 concerning Judicial Power but is related. Thus, BPSK is an auxiliary state institution in the field of justice often called quasi justice.

As stated above, BPSK is a quasi judiciary in the constitution, Article 24 paragraph (3) of the 1945 Constitution stipulates, "Other bodies whose functions are related to judicial power are regulated by law." that the law in question does not need to be special, such as the prosecutor's law, the police law, and so on. This means that the provisions regarding the other bodies referred to above are sufficient to be regulated in any law whose material is mixed with the material of other laws (Yuanitasari & Kusmayanti, 2019). The decision of the BPSK panel is final and binding (article 54 paragraph 3) it is a quasi-judicial body in the field of consumer disputes, just like the tax or labor dispute resolution body. handling consumer cases, since they are handled by BPSK and after the decision is implemented quickly (Siahaan, 2005).

Apart from what has been described above, the following is an explanation that states that BPSK is a quasi-judiciary. Connected with the duties and authorities of BPSK contained in Article 52 UUPK some authorities make BPSK be said to be quasi-judicial; It is explained this way because, firstly, the power to provide assessments and considerations is contained in Article 52 letter (k) which reads "to decide and determine whether or not there is harm on the part of the consumer." Second, the power to hear and determine or ascertain facts and to make decisions is contained in Article 52 letter (h) which reads "to summon and present witnesses, expert witnesses and/or any person who is deemed to know about violations of this Law" and (j) reads "obtain, examine and/or assess letters, documents or other evidence for investigation and/or examination."

Furthermore, thirdly, the power to make decisions and considerations that bind a legal subject with the decision and considerations made is contained in Article 52 letter (l) which reads "notifying decisions to business actors who violate consumer protection. " Fourth, the power to influence people's rights or property rights of individuals is contained in Article 52 letter (c) which reads "to supervise the inclusion of standard clauses."

Article 55 states that decisions on consumer cases handled by BPSK must be issued no later than 21 working days after the lawsuit is received. within a maximum period of seven working days, after the lawsuit is received, the business actor who is subject to the penalty must have carried out the decision (article 56 paragraph 2) (Siahaan, 2005).

The fifth power is to test witnesses, to compel witnesses to attend, and to hear statements from the parties in the trial contained in Article 52 letter (i) which reads "requesting assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letters g and h, who are not willing to comply with the summons of the consumer dispute resolution body."

Finally, the power to enforce decisions or impose punitive sanctions is contained in article 52 letter (m) which reads "to impose administrative sanctions on business actors who violate the provisions of this Law" and the nature of BPSK decisions is final and binding. However, with this last power, the UUPK is half-hearted in granting authority to BPSK because it must request an order of execution from the District Court where the consumer has suffered the loss (Siahaan, 2005).

### **District Court Objections and Execution Institution**

Parties who are dissatisfied with the decision, including business actors, can submit an objection to the district court, no later than 14 working days after receiving notification of the decision (article 56 paragraph 2). Business actors who do not submit an objection within that time limit are deemed to have accepted the decision. from BPSK (paragraph 3).

If the business actor does not carry out the decision, BPSK hands over the decision to the investigator so that an investigation can be carried out. This BPSK decision is sufficient initial evidence for further investigations (paragraphs 4 and 5)

Objections for those who are dissatisfied with the BPSK decision can be said to be an appeal or simply an objection. If it is interpreted that an objection is seen as filing a lawsuit in the district court, then the consequences will be different, because the person who files an objection in this dispute in the district court will be in the position of plaintiff, while the BPSK which issued the decision will be in the position of defendant.

Two irregularities occur if this is the case: First, BPSK, which is a dispute resolution institution, will be a party to consumer disputes. Second, the process of resolving consumer disputes has become longer even though the maximum time limits for resolution at each stage of the process have been strictly determined by law (Siahaan, 2005).

The party who submits a dissatisfied objection in a BPSK dispute to the district court is an appeal and not a lawsuit. If it is said to be the same as a lawsuit, the consequence is that all case materials will be examined again in the district court. This incident wastes a lot of time and energy.

The next consequence is that BPSK as a dispute resolution institution becomes a party, namely as a defendant in the dispute. It must be realized that dispute resolution institutions with the system contained in the 1999 UUPK are made to be more practical, cheap, and fast. Unlike the system found in ordinary justice, which takes quite a long time and costs quite a lot (Siahaan, 2005).

### **CONCLUSION**

The position of BPSK is not as a judicial institution which can be categorized as a main judicial institution according to Law no. 48 of 2009 concerning Judicial Power but is related. Thus, BPSK is an auxiliary state institution in the field of justice or is often called quasi-judicial. Then consumers whose existence is weaker than business actors, because business

actors often carry out actions that can harm consumers to gain profits, therefore consumers need to receive legal protection, even though the UUPK has been formed to resolve consumer disputes through BPSK, it is the UUPK that determining that the BPSK decision is final and binding has not been fully implemented consistently as stated in the UUPK because there is still an opportunity to submit objections for parties who object to the BPSK decision.

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