

JURIDICAL ANALYSIS OF DISPUTE SETTLEMENT AT TANJUNGPINANG CITY CONSUMER DISPUTE SETTLEMENT AGENCY (BPSK) TO REALIZE PROTECTION AND LEGAL CERTAINTY

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ABSTRACT

It is undeniable that today the competition in the business world is getting heavier and tighter, so to survive, many businesses take all kinds of ways, such as holding promotions, discounts, gifts, and promises that will interest consumers. The consumer is any user of goods and services available in the community, both for the benefit of themselves, their families, others, and other living beings and not for trade. A civil dispute is a civil case with at least two parties, the plaintiff and the defendant. If in society, there is a dispute that cannot be resolved by deliberation, then the injured party can file a lawsuit. This party is called the plaintiff. The lawsuit is filed with the court or institution authorized to resolve the dispute. Law No. 8 of 1999 on Consumer Protection gives the right to consumers to file a lawsuit against business actors and defend their rights against business actors. The parties are also protected by their respective rights and obligations. Under this provision, consumers can determine the form of settlement to be chosen as specified in Article 45 paragraph 2, namely, "Consumer Dispute Resolution can be reached through the court or outside the court based on the voluntary choice of the parties to the dispute." If consumers choose to resolve consumer disputes out of court, the institution authorized to handle the disagreement is the Consumer Dispute Resolution Agency. Consumer Dispute Resolution Agency. All parties must take a role in making businesses and consumers aware of their respective rights, duties, and responsibilities. This must be done to ensure the protection of consumers and business actors. However, in reality, there are business actors in promoting and marketing very exploitative and often detrimental to consumers. If business actors harm consumers, then consumers can use their right to get compensation if the condition of the goods or services purchased is not as it should be. BPSK Tanjungpinang city was formed based on the mandate of Law No. 8 of 1999, which was reaffirmed by the mayor of Tanjungpinang on the application for the establishment of the Consumer Dispute Resolution Agency Tanjungpinang City No. 382 / INDAGKPM / 2006, as well as Presidential Decree No. 32 of 2008 on the establishment of the Consumer Dispute Resolution agency in Tanjungpinang city.

Keyword: *Dispute, BPSK, Legal Protection, Security*

1. INTRODUCTION

In carrying out life activities, contact occurs between humans or legal entities, both in the form of interpersonal relationships and business transactions that can cause reactions. These interactions can cause positive reactions, namely those that do not harm society, or adverse reactions that determine harm to other people, causing disputes [1].

It is undeniable that nowadays, competition in the business world is getting more demanding and challenging. To survive, many business actors take all kinds of methods, such as holding promotions, discounts, gifts, and promises that will attract consumers. Consumers are all users of goods and services available in society, both for the benefit of themselves, their families, other people, and other living things and not for trading [1].

All parties must take a role in making business actors and consumers aware of their respective rights, duties, and responsibilities. This must be done to ensure the protection of consumers and business actors. However, in reality, business actors in promoting and marketing are very exploitative and often harm consumers. If business actors harm consumers, consumers can use their rights to obtain compensation if the condition of the goods or services they buy is not as they should be. For this reason, consumers can sue business actors directly to fulfill their obligations to be able to provide compensation for the goods or services they trade. This is if, between consumers and business actors, there is a direct relationship in the transaction. In reality, the relationship between consumers and business actors is not immediate and only relates to goods and services. Hence, the responsibility of business actors is product responsibility, while in a direct relationship, the obligation is contractual.

Business actors always argue that the fault lies with the consumer, who is not careful or misrepresents the type of goods or services he buys. Hence, the business actor is not responsible for the error. Suppose the business actor wants to avoid being accountable for compensating for consumer damage and loss due to consuming the goods and services produced or traded. This will result in a consumer dispute between the business actor and the consumer, who demands compensation for the damage, pollution, and those who suffer losses from consuming goods and utilizing services.

Advances in science, technology, and informatics also support the expansion of the space for transactions of goods and services to cross national borders. On the one hand, such conditions are very beneficial for the interests of consumers because their needs for the desired goods and services can be fulfilled, and the freedom to choose the various types of goods and services they want is more comprehensive.

Between business actors and consumers, disputes often occur. Most Indonesian people are familiar with the term dispute. Disputes arise as a result of human contact as social beings. A dispute is a problem or dispute between one party and another regarding something. Disputes themselves take various forms, one of which is a civil dispute. Civil disputes are cases in which there are at least two parties, namely the plaintiff and the defendant. If in society, there is a dispute that cannot be resolved through deliberation, then the party whose rights are impaired can file a lawsuit. This party is called the plaintiff. The case is submitted to a court or institution authorized to resolve the dispute [1].

Law Number 8 of 1999 concerning Consumer Protection gives consumers the right to file lawsuits against business actors and defend their rights against business actors. The parties are also protected by their respective rights and obligations. Based on this provision, consumers are given a choice to determine the form of settlement as specified in Article 45, paragraph 2: "Consumer dispute resolution can be reached through court or out of court based on the voluntary choice of the parties to the dispute." If consumers settle consumer disputes outside the court, the institution authorized to handle such conflicts is the Consumer Dispute Settlement Agency.

BPSK Tanjungpinang City was formed based on the mandate of Law No. 8 of 1999, which was strengthened again through a letter from the Mayor of Tanjungpinang concerning the Request for the establishment of the Tanjungpinang City Consumer Dispute Settlement Agency No. 382/INDAGKPM/2006, as well as RI Presidential Decree NO. 32 of 2008 concerning establishing the Consumer Dispute Settlement Agency in Tanjung Pinang City. The screening stage for new BPSK Members started from April to May 2011. In the later stages, 22 BPSK candidate members took part in the selection series, in which 9 BPSK members were elected consisting of 3 Elements, namely, Government Elements, Business Actor Elements, and Consumer Elements. And on February 17, 2012, BPSK members of Tanjungpinang City were appointed by the Mayor of Tanjungpinang on behalf of the Minister of Trade of the Republic of Indonesia with letter number 1096/M-DAG/KEP/12/2011. And in its performance, BPSK members are assisted by the Secretariat, which consists of the Head of the Secretariat and Secretariat Members totaling four people. The basis for the work of secretariat members is the Decree of the Director General of Domestic Trade Number 59/SPK/Kep/06/2012 dated June 21, 2012, which was later strengthened through the minutes of the inauguration and oath-taking of the Head of the Secretariat and Members of the Secretariat on June 28, 2012.

In 2017, the term of office for the Tanjungpinang City BPSK Management was formed through the Decree of the Minister of Trade Number 1096/M-DAG/KEP/12/2011 concerning the Appointment of Members of the Consumer Dispute Settlement Agency will end. To continue the functions and duties of the BPSK as mandated in the Consumer Protection Law, it is necessary to immediately form the management structure of the BPSK for the 2017-2021 period, which first includes a selection team. However, there was a transfer of authority as a result of RI Law Number 23 of 2014 concerning the Regional Government regarding the process of forming a selection team for BPSK members of Tanjungpinang City, which was initially the authority of the Tanjungpinang City Government, which was transferred to the Riau Islands Provincial Government, which in terms of the Industry and Trade Office of the Archipelago Province Riau. On April 12, 2018, the Governor of the Riau Archipelago Province, on behalf of the Indonesian Minister of Trade, officially appointed BPSK Members of Tanjungpinang City for the 2017-2021

period. Based on the description above, the writer is interested in taking the title of the thesis entitled "Juridical Analysis of Dispute Resolution at the Consumer Dispute Settlement Agency (BPSK) of Tanjungpinang City.

1.1 Benefits Of Research

The research that the writer has done will be of benefit to the writer, but it is hoped that it will also be of use to other parties and provide positive benefits. These benefits include the following [1].

a. Theoretical Benefits

The results of this study are expected to contribute to the development of legal science, especially the law of consumer protection because the results of this study provide clarity regarding the laws and regulations that apply to the implementation of consumer protection in Tanjungpinang City.

b. Practical Benefits

Practically this research is expected to provide benefits to legislators, law enforcement officials, and BPSK Members of Tanjungpinang City, as follows:

- 1) Legislators because the results of this study explain the Implementation of Legal Protection for Consumers and Business Actors in Tanjungpinang City.
- 2) The Consumer Dispute Settlement Agency because the results of this study explain to members in terms of the Implementation of Legal Protection for Consumers and Business Actors in Tanjungpinang City in more detail.

1.2 Research Methods

This study uses the writing method, among others, as follows:

The author uses empirical or sociological legal research methods. This research is based on primary data/basic data, namely data obtained directly from the community as the first source through field research. Primary data is obtained through field research, for example, through observation, interviews by distributing questionnaires. Sociological law research can be realized into research on the effectiveness of the law currently in effect or research on legal identification.

1.3 Location, Population and Sample

This research was conducted at the Office of the Tanjungpinang City Consumer Dispute Resolution Agency. The Consumer Dispute Settlement Agency has the following tasks:

- a. Carry out the handling and settlement of consumer disputes by way of mediation, arbitration, or conciliation;
- b. Providing consumer protection consulting;
- c. Supervise the inclusion of standard clauses;
- d. Report to the general investigator if there is a violation of the provisions of this law;
- e. Receiving written or unwritten complaints from consumers regarding violations of consumer protection;
- f. Conduct research and examination of consumer protection disputes;
- g. Summon business actors suspected of having violated consumer protection;
- h. Summon and present witnesses, expert witnesses, and everyone who is deemed to know about violations of consumer protection;
- i. Request the help of investigators to bring witnesses, expert witnesses, or everyone referred to in letters g and h who are not willing to fulfill BPSK summons;
- j. Obtain, examine, and assess letters, documents, or other evidence for investigation and examination;
- k. Decide and determine whether or not there is a loss on the part of the consumer;
- l. Notify the decision business actors who violate consumer protection;
- m. Imposing administrative sanctions on business actors who violate the provisions of this Law.

As a population carried out several consumer disputes that BPSK Tanjungpinang City is handling. In this study, the author uses a non-probability or non-random sampling technique by means of purposive sampling.

1.4 Data Collection Techniques and Data Collection Tools

In this study, the author uses interview techniques to collect data. The interviews used were open interviews by holding direct questions and answers based on a list of questions made beforehand and developed during the interview. The author conducted interviews with the Head of BPSK Tanjungpinang City. In addition, the data source

used by the author in this study is secondary data. Based on this research, the data analysis that the author uses as a law student is a qualitative analysis because the research is based on facts that apply legislation, not statistical data.

2. RESULTS AND DISCUSSION

2.1 Understanding Consumers

The definition of a consumer in a general sense is a user, user, and or beneficiary of goods and services for a particular purpose [21]. Hondius, an expert on consumer issues in the Netherlands, concluded that legal experts generally agreed to define consumers as the ultimate users of goods and services. With this formulation, Hondius wants to differentiate between non-end-user consumers (intermediate consumers) and end-user consumers [22].

2.2 Consumer Protection

The emergence of consumer protection is due to the weak position of consumers compared to business actors. The ratio of someone needing to be protected is because the person concerned is vulnerable. The form of protection given to weak parties, including, in this case, consumers, is law because one of the characteristics and purposes of the law is to provide safety and protection to citizens. According to Inosentius Syamsul, consumer protection law is statutory regulations, both laws and other laws and decisions of judges whose substance regulates the interests of consumers [34].

Consumer protection is all efforts that guarantee legal certainty to protect consumers. Ahmadi Miru and Sutarman Yodo explained that the formulation of the definition of consumer protection referred to in Article 1 point 1 of the UUPK mentioned above is sufficient [36]. The sentence, "all efforts to ensure legal certainty," is expected to act as a bulwark to eliminate arbitrary actions that benefit business actors only for the benefit of consumers [37].

2.3 Principles of Consumer Protection

The principle is something that is the basis of the principle. The essence of the notion of principle, which in English is called "principle," in Dutch it is called "begins," and in Latin, it is called "principle," is the basis, the principal place to return a thought. According to the Indonesian Dictionary, the principles are [42]:

1. Basic (something on which one thinks or thinks).
2. Fundamental ideals (association or organization).
3. Basic law.

On the other hand, G.W. Paton argued, "a principle is a broad reason, which lies at the base of the rule of law" (a principle is a broadly formulated mind which underlies the existence of a legal norm) [43]. As quoted by Sudikno Mertokusumo, the Liang Genie argues that the principle is a general proposition that is stated in general terms without suggesting specific ways of implementing it, which is applied to a series of actions to become the right guide for that action [44].

2.4 Consumer Disputes and their Settlement

In the context of litigation settlement of cases, the word dispute is synonymous with contentious or contentious. The word contentious or contentious comes from Latin, which means enthusiastically competing or polemicizing. Thus, in a litigation settlement, a lawsuit that contains a dispute is called a controversial or contentious lawsuit [54]. Law Number 8 of 1999 concerning Consumer Protection does not define what is meant by a consumer dispute. Several provisions can be used to understand consumer disputes, including those contained in Article 1 point 11, which stipulates that the Consumer Dispute Settlement Agency is tasked with handling and resolving disputes between business actors and consumers. Based on the interpretation of this provision, it can be interpreted that consumer disputes are disputes that occur between consumers and business actors. Jannus Sidabalok formulates consumer disputes as disputes that arise between business actors and consumers originating from consumer transactions [57].

Authentically, the definition of consumer disputes is regulated in the Decree of the Minister of Trade of the Republic of Indonesia No.350/MPP/Kep/12/2001, namely disputes between business actors and consumers who demand compensation for damage, pollution, and those who suffer losses as a result of consuming goods and make use of services. Intan Nur Rahmawanti and Rukiya Lubis stated that although consumer disputes have a background that is not much different from other disputes, the two have different interests. Consumer disputes have special characteristics.

2.5 Settlement of Consumer Disputes Through BPSK

The Consumer Dispute Settlement Agency (BPSK) is a body tasked with handling and resolving disputes between business actors and consumers as a non-structural institution domiciled in the Regency/City area and has the function of resolving consumer disputes outside the court. BPSK is expected to facilitate, speed up and provide a guarantee of legal certainty for consumers to claim their civil rights against business actors who are not right. In addition, it can also provide access to information and guarantee equal legal protection for consumers and business actors. In other words, it can also be stated that BPSK is an institution formed and regulated by a law whose main task is to resolve disputes or disputes between consumers and business actors.

The establishment of BPSK is a form of developing problems that occur related to disputes in the consumer sector. The legal basis for establishing BPSK as a consumer dispute resolution institution outside the court is regulated in Article 49 paragraph (1) UUPK, which stipulates that the government establishes a Consumer Dispute Settlement Agency in Level II Regions to settle consumer disputes outside the court.

2.6 Dispute Resolution Process

The settlement of disputes between consumers and business actors can be resolved through litigation (through court) and non-litigation (not through court). Compensation through litigation institutions is considered less efficient regarding time, cost, and effort, so the public widely chooses settlement through non-litigation institutions in resolving the disputes in question. Even so, the court will still be the last resort if there is no agreement at the non-litigation level.

As an institution authorized to handle and resolve disputes between business actors and consumers, BPSK, within its authority, can pursue this using mediation, conciliation, or arbitration. The consumer protection law does not define mediation, conciliation, or arbitration in consumer protection. This was further explained in the Decree of the Minister of Industry and Trade Number 350 of 2001 concerning the Duties and Authorities of the BPSK. In the Ministerial Decree, mediation is defined as resolving consumer disputes outside the court with BPSK as an advisor, and the settlement is left to the parties. The conciliation process is similar to mediation. The difference is that BPSK only brings together the disputing parties in the conciliation process. Meanwhile, arbitration is a process of resolving consumer disputes outside the court, in which case the parties to the disagreement fully submit dispute resolution to BPSK.

In consumer disputes, BPSK, which the government formed, should be part of efforts to protect consumers when conflicts with business actors. As the institution that creates BPSK, the government is not severe in developing BPSK to become optimal. The general impression appears that both the central and regional governments are more busy pursuing and serving investors than thinking about public interests, including consumer rights

3. CONCLUSIONS

The conclusions of this study are as follows.

1. The regulation regarding BPSK is still very ineffective, especially in regulating the executorial power of the BPSK decision itself. In the UUPK, the BPSK Decision is declared to have final and binding legal force, but in the Permenperindag Number 06/M-DAG/PER/2/2017 Concerning the Implementation of the Duties and Authorities of the BPSK it is stated that the BPSK Decision can be pursued through a court of the first instance, this certainly creates legal uncertainty;
2. The process of resolving consumer disputes based on the Consumer Protection Act can be pursued using litigation and non-litigation channels. Settlement through non-litigation channels is carried out by BPSK using Mediation, Conciliation, and Arbitration. However, BPSK cannot play an active role in resolving consumer disputes, this is because the substance of the regulation, procedure, and mechanism for resolving disputes contains many weaknesses;
3. BPSK also still needs help with the low quality of human resources (HR), inadequate or even inadequate facilities and infrastructure, to external issues in the form of public legal awareness of the importance of enforcing consumer protection laws which still need to be improved. This is due to the lack of socialization that is currently being carried out.

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