

Comparative Juridical Analysis of Consumer–Business Dispute Resolution Effectiveness: A Study of the Consumer Dispute Settlement Agency and the Court Mechanism

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Abstract: Consumer problem solving in business aspects can be solved in two ways, namely through the mechanism at BPSK and the Court. Problem solving through BPSK takes a mediation approach and prioritizes good faith and voluntariness. Efforts to resolve problems through the Court prioritize the mediation process first, if peace is not achieved, it will be continued to the trial process and the issuance of a decision from the trial, the power of the court's decision has strong legal authority. So in this study, it is worth examining the comparison of the effectiveness of resolving consumer problems through BPSK and the Court. This research is a normative legal research, legal research based on literacy materials in the form of books, journals, legal theories and laws and regulations that are developing in society and using a comparative concept approach by comparing or comparing one of the legal institutions.

Keywords: Business, consumers, BPSK, Court.

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1. Introduction

Social relations within society, which encompass a wide range of interactions, do not always proceed harmoniously. Disagreements often arise among individuals involved in these interactions, which may lead to conflicts and ultimately result in legal disputes. This scenario is also common in business and commercial activities. In the course of conducting business, differences in interpretation or understanding frequently occur, leading to disagreements that may escalate into disputes. The legal provisions governing consumer-related issues are set out in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Act or UUPK). However, the UUPK does not explicitly provide a clear and concrete definition of disputes between consumers and business actors. Nevertheless, it is certain that such disputes may arise in the course of business activities. Therefore,

there is a pressing need for a legal framework and a dedicated dispute resolution body capable of offering effective solutions while preserving the relationship between consumers and business actors within the context of commercial and business activities.

Problems that frequently arise in business activities are addressed under the provisions of the Consumer Protection Act (UUPK), particularly in Article 45 paragraph (2), which regulates the resolution of disputes between consumers and business actors in the course of commercial activities. This article outlines two mechanisms for dispute resolution: through litigation in the court system and through non-litigation means, namely via the Consumer Dispute Settlement Agency (BPSK). (Mairul & Irianto, 2018)

Quoting Takdir Rahmadi, a problem is defined as a conflict situation and a tangible difference in perspectives. Consumer disputes may arise in nearly every business relationship established between consumers and business actors. One of the most common forms of such relationships is the transaction of buying and selling. In the course of these business activities, it is inevitable that certain issues may emerge, potentially leading to legal disputes (Rahmadi, 2010).

Referring to the provisions of Article 49 of the Consumer Protection Act (UUPK) and Minister of Trade Regulation No. 06/M-DAG/PER/2/2017 concerning BPSK, the Consumer Dispute Settlement Agency (BPSK) is defined as a specialized institution that handles consumer disputes through non-litigation mechanisms. It offers a low-cost, expedited legal process and aims to provide efficient resolution by prioritizing good faith and voluntary participation. This approach is considered effective in de-escalating conflicts and better preserving the relationship between the parties involved in a business context. Based on these provisions, dispute resolution through BPSK is generally limited to cases involving relatively small-scale losses. Furthermore, decisions rendered by BPSK are considered final, except in situations where they conflict with Article 54 of the Consumer Protection Act (UUPK) in conjunction with Article 42 paragraph (1) of Minister of Industry and Trade Decree No. 350/MPP/Kep/12/2001 of 2001 concerning the Implementation of Duties and Authorities of BPSK (Rambe et al., 2022).

The resolution of disputes between consumers and business actors through the court system refers to the general procedural law in force, as stipulated in Article 45 paragraph (1) of the Consumer Protection Act (UUPK). Such disputes may be resolved through either regular litigation procedures or the simplified lawsuit mechanism, in accordance with the provisions of Supreme Court Regulation (PERMA) No. 4 of 2019, which amends PERMA No. 2 of 2015 on Procedures for the Settlement of Simplified Lawsuits (hereinafter referred to as the PERMA on Simplified Lawsuits). In addition to litigation, parties may also choose to resolve disputes through BPSK, taking into account the provisions of Article 45 paragraphs (3) and (4) of the UUPK.

The resolution of disputes between consumers and business actors within the context of business activities must be carried out through the most effective and efficient

means possible, so as not to disrupt ongoing commercial operations. Based on this premise, the present study focuses on analyzing the effectiveness of dispute resolution mechanisms in business-related consumer issues, by comparing the settlement processes conducted through the Consumer Dispute Settlement Agency (BPSK) and the formal court system.

Based on the aforementioned background, this study is guided by several key questions that aim to be explored in depth. First, it seeks to understand the specific duties and authorities of the Consumer Dispute Settlement Agency (BPSK) in addressing issues arising between consumers and business actors. Second, the research examines the extent of the court's role in resolving similar disputes, including the applicable legal mechanisms within the judicial system. Lastly, the core focus of this study lies in comparing the effectiveness of these two dispute resolution pathways—BPSK and the courts—in settling business-related conflicts between consumers and business actors.

2. Method

This research employs a normative juridical method, which is a legal research approach grounded in the study of legal literature, legal theories, and statutory regulations that exist within society, from the highest to the lowest hierarchical levels. The analysis involves examining relevant legal provisions and interpreting them in order to identify applicable legal principles related to the legal issues under review. In addition, the researcher adopts several approaches: the statutory approach, the conceptual approach, and the comparative approach. The statutory approach involves a comprehensive examination of all laws and regulations relevant to the legal issue being discussed. The comparative conceptual approach is applied by comparing legal institutions within one legal system to those in other legal systems or jurisdictions, to gain broader insights into how similar legal issues are addressed in different countries.

3. Result & Discussion

3.1 Duties and Authorities of BPSK in Consumer and Business Actor Disputes

One of the primary reasons behind the establishment of the Consumer Protection Act (UUPK) was to address the existing gap and tension within the business sector regarding consumer protection in transactions involving business actors. The imbalance in the legal position between consumers and business actors often places consumers in a vulnerable position, particularly in terms of access to justice and the enforcement of their rights (Dahlia, 2014). Based on the aforementioned issue, an institution was established to provide consumer protection, namely the Consumer Dispute Settlement Agency (BPSK), as stipulated in the Consumer Protection Act (UUPK). This institution operates in accordance with the provisions set forth in Article 1 point 11 of the UUPK (Nugroho, 2008).

The establishment of the Consumer Dispute Settlement Agency (BPSK) aims to facilitate the resolution of disputes between consumers and business actors in an efficient and low-cost manner. This mechanism is regarded by many as more effective

and efficient due to its expedited process, the relatively quick issuance of decisions, the final and binding nature of its rulings, and the overall affordability of the procedure. In carrying out its duties to resolve disputes between consumers and business actors, BPSK forms an adjudicating panel composed of an odd number of members, with a minimum of three and a maximum of five, supported by a registrar. The roles and authorities of BPSK are regulated under Article 52 of the Consumer Protection Act (UUPK). Pursuant to this provision, BPSK is authorized to impose administrative sanctions on business actors who are found to have violated Article 19 of the UUPK.

In addition to the provisions under the UUPK, the duties and authorities of BPSK are further governed by Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001. Based on these frameworks, the core mandate of BPSK in addressing consumer disputes is to function as a specialized institution whose primary objective is to safeguard consumer rights in cases involving business actors, thereby preventing harm to consumers. It also serves as a forum that facilitates efficient dispute resolution within a relatively short timeframe. This institutional design is grounded in the recognition that there exists an imbalance of power between consumers and business actors. Hence, BPSK's presence is essential for the fulfillment of consumer rights and the provision of a dispute resolution mechanism that is accessible, prompt, and affordable—an approach that is particularly effective in the context of business activities requiring swift resolution.

3.2 The Role of the Courts in Consumer and Business Actor Disputes

Efforts to resolve consumer disputes through the courts—commonly referred to as litigation—involve the use of the formal judicial system. The term "litigation" originates from the word litigation, which denotes the process of taking legal action in court. The primary function of the judiciary in this context is to examine and adjudicate the dispute in accordance with the applicable laws and procedures. (Panjaitan, 2021). The judicial process often gives rise to new dynamics in which each party seeks to prove their respective claims, a process that may fall short in accommodating the shared interests of both sides. Additionally, the procedural mechanisms involved in litigation tend to be time-consuming, requiring multiple stages that can prolong the resolution of the dispute (Fitrotin Jamilah, 2018). Pursuant to the provisions set forth in Article 48 of the Consumer Protection Act (UUPK), in conjunction with Article 46 paragraph (1), the resolution of consumer disputes through the courts is governed by the rules of general civil procedure. These provisions stipulate that lawsuits may be filed directly by the consumer, by their heirs and/or legal representatives, through class action lawsuits, by the government, or through simplified litigation procedures.

In relation to dispute resolution through the general judiciary, there are two primary mechanisms for filing a lawsuit: regular lawsuits (*gugatan biasa*) and simplified lawsuits (*gugatan sederhana*). A regular lawsuit is submitted to the Chief Judge of the Court and follows the standard procedural rules, while a simplified lawsuit—although falling under the jurisdiction and procedural framework of the general court—is

intended to be resolved in a faster, simpler, and more cost-efficient manner. The most fundamental difference between these two types of lawsuits lies in the object of the claim and the procedural process applied in court. Simplified lawsuits are generally reserved for disputes involving smaller claims and more straightforward legal issues, whereas regular lawsuits may involve more complex matters requiring extended examination and legal arguments.

In general, regular litigation is the most commonly pursued avenue for dispute resolution in court. However, since the issuance of the Supreme Court Regulation (PERMA) on Simplified Lawsuits, many consumer disputes have increasingly been resolved through the simplified lawsuit mechanism. This is in accordance with Articles 3 and 4 of the PERMA, which set out the criteria for submitting simplified claims to the court. As long as these criteria are met, filing a simplified lawsuit is considered legally valid.

While regular litigation provides a comprehensive legal framework, it poses significant challenges—primarily the lengthy and complex procedural process. This can be inefficient, especially when compared to the pace required in business environments where economic cycles demand swift resolution. Nevertheless, in cases where consumer-business disputes require legal enforcement and execution related to the object of the dispute, the court system offers binding authority with the power to enforce judgments.

Moreover, litigation encompasses broader legal avenues, including class actions and lawsuits filed by government institutions, thereby extending its scope of legal coverage. Importantly, the court mechanism also provides space for settlement. Parties are given the opportunity to engage in court-annexed mediation in pursuit of a win-win solution, potentially resolving the dispute before the formal trial proceeds. In fact, parties are also allowed to reach an out-of-court settlement prior to the submission of the defendant's response, further demonstrating the flexibility of the judicial process in accommodating peaceful resolution.

3.3 Comparison of the Effectiveness of Consumer Dispute Resolution Mechanisms Through BPSK and the Courts

Disputes between consumers and business actors may be addressed through two legal mechanisms: the Consumer Dispute Settlement Agency (BPSK) and the court system. The legal process through BPSK allows consumers to submit complaints either in writing or orally, while the court route involves the filing of a formal lawsuit. Both mechanisms serve as legitimate avenues for resolving disputes, and each offers distinct advantages depending on the nature and complexity of the case. These legal pathways provide the parties involved with the opportunity to seek the most effective and efficient resolution strategy for the specific issues they face.

Consumers who feel that their rights have been violated may submit a formal objection—either in writing or orally—to the Consumer Dispute Settlement Agency (BPSK). Such a submission can be made directly by the consumer or through a legal representative. The application must comply with the procedural requirements set by

BPSK, which include a chronology of the incident, the name and address of the applicant, the name and address of the respondent, supporting evidence, and witness statements. If the application is incomplete, BPSK has the authority to provide guidance to the applicant in order to fulfill the necessary requirements. Alternatively, BPSK may reject the report if it fails to meet the established procedural standards (Rahman, 2018).

The dispute resolution mechanism through BPSK is designed to be fast, simple, and low-cost, emphasizing good faith and negotiation, resulting in decisions based on voluntary agreement. Despite this conciliatory approach, BPSK decisions are considered final and binding. However, such decisions may be challenged by filing an objection with the District Court, and further appeal may be pursued through a cassation to the Supreme Court. In the judicial process, objections to BPSK rulings and related lawsuits are resolved under the general rules of civil procedure as governed by the HIR/RBg and the Indonesian Civil Code (KUHPerduta), while still adhering to the provisions of the Consumer Protection Act (UUPK). Various types of lawsuits can be filed in general courts, including regular lawsuits, class actions, legal standing claims, government lawsuits, and simplified lawsuits, each offering different procedural frameworks depending on the nature and scope of the dispute (Rahmawayi & Lubis, 2018).

Legal proceedings through the court system also provide an opportunity for amicable settlement through mediation, which emphasizes a win-win solution for both parties. If mediation fails to produce an agreement, the process continues with the reading of the claim, followed by the evidentiary stage, and concludes with a court decision. If either party is dissatisfied with the decision, they may pursue further legal remedies through appeal, cassation, or judicial review. However, this process is often lengthy and time-consuming, as it involves multiple stages of litigation and procedural steps. The complexity and duration of court proceedings make them less efficient compared to alternative dispute resolution mechanisms, particularly for business contexts that demand prompt resolution (Rahmawayi & Lubis, 2018).

In addition to the lengthy process, parties involved in legal disputes through the court system must also bear substantial costs. These may include court registration fees (SKUM), travel and accommodation expenses related to court appearances, costs for legal document authentication and stamp duty during the evidentiary stage, as well as legal service fees if the parties choose to be represented by attorneys. Moreover, confidentiality may not be fully guaranteed, as court hearings are generally open to the public, which allows members of the public to access and observe proceedings. As a result, sensitive details concerning the dispute between the consumer and the business actor may become known to a wider audience, potentially affecting the reputations of both parties (Nababan, 2021).

The most significant difference in the effectiveness of dispute resolution through BPSK and the courts lies in the legal strength of their respective decisions. BPSK decisions differ substantially from court rulings in that they function more as mediatory or facilitative outcomes, prioritizing good faith and voluntary agreement

between the parties. BPSK emphasizes amicable settlement rather than coercive enforcement. However, a major limitation of BPSK rulings is that they lack direct executorial power over the object of the consumer dispute. This is considered less effective in cases where the resolution requires further legal action, such as enforcement of a decision. In contrast, court decisions carry binding legal force and, once they obtain permanent legal standing (*inkracht van gewijsde*), the court may issue enforcement orders directly based on the verdict. This executorial power makes court rulings more authoritative and legally enforceable, obliging all parties to comply with the terms of the decision (Wijaya, 2023).

Based on the above explanation, it is evident that the execution of BPSK decisions presents challenges, particularly for the party in whose favor the decision was rendered. Unlike court decisions, BPSK rulings lack strong legal authority and enforceability. In contrast, court decisions carry binding legal force and must be adhered to, especially in execution, which may involve the seizure or sale of disputed objects to provide compensation to the aggrieved party. A key aspect in comparing the effectiveness of dispute resolution through BPSK and the courts lies in the matter of compensation and coercive fines (*dwangsom*). Given the nature of BPSK decisions, which emphasize good faith and voluntary compliance, the imposition of compensation may hinder peaceful settlements.

This significantly differs from court decisions, which are commanding and enforceable. In litigation, as long as the injured party can prove their legal claims, the court may grant compensation. This allows for more comprehensive recovery of damages, and the judgment can be directly imposed on the losing party. Furthermore, if a party fails to comply with a court decision, the legal process allows for the imposition of coercive fines. The longer the delay in execution, the higher the penalty the non-compliant party must pay. This mechanism strengthens the enforceability of court judgments and incentivizes prompt compliance. Given these factors, the judiciary holds greater legal authority and is more effective in enforcing its rulings. Meanwhile, BPSK serves primarily as a quick, low-cost, and cooperative alternative focused on achieving win-win solutions. Therefore, it is essential for both consumers and business actors to carefully assess their legal needs and the nature of the dispute before selecting a resolution forum. If the dispute involves matters requiring legal execution—such as asset seizure or mandatory compliance—a court mechanism is the most effective option. Conversely, if the parties are cooperative and the issue can be resolved amicably, BPSK presents an efficient and practical alternative.

4. Conclusion

This study demonstrates that BPSK plays a significant role in protecting consumer rights through an accessible and voluntary dispute resolution mechanism. However, its primary limitation lies in the absence of enforcement authority, which often renders its decisions less effective. In contrast, the court system offers stronger legal certainty and enforceability, although the judicial process tends to be slower and less efficient for the fast-paced nature of business activities.

Therefore, there is a need to strengthen BPSK's regulatory framework, either by granting it enforcement powers or by establishing collaborative mechanisms with authorized enforcement institutions. On the other hand, the choice of dispute resolution forum should be aligned with the legal needs and the nature of the dispute: courts are more appropriate when enforceable rulings are required, while BPSK serves as an efficient alternative for parties willing to resolve disputes amicably and in good faith.

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