

# Analysis of Duties and Authorities of the Consumer Dispute Settlement Agency (BPSK) to Adjudge Consumer Dispute (Case Number 689/PDT.SUS-BPSK/2019/PN.JKT.UTR)

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## ABSTRACT

The Consumer Dispute Settlement Agency (BPSK) is authorized to handle Consumer disputes who feel aggrieved by the occasionally arbitrary conduct of business actors under Law Number 8 of 1999 concerning Consumer Protection. The objective of this study is to ascertain the legal ramifications of canceling BPSK Decision No. 001/A/BPSK-DKI/X/2019 in the lawsuit filed by the Petitioner for Objection at the North Jakarta District Court, as well as the duties and authorities of the Consumer Dispute Settlement Agency (BPSK) in resolving this dispute. BPSK judgments, whether through Conciliation, Mediation, or Arbitration, can be disputed. As a result, the legal implications of cancelling the BPSK decision in the Petitioner for Objection's case cannot be carried out/implemented. The writer also strongly supports the growth of BPSK since it is a small court (Small Claim Court) that conducts trials by generating judgments swiftly, simply, and at a low cost by judicial principles, and therefore it requires support from all parties involved. This study was carried out utilizing normative legal research.

**Keywords:** Consumer Protection, Consumer Dispute, Arbitration, The Consumer Dispute Settlement Agency (BPSK).

## 1. INTRODUCTION

Humans as individual beings have a solitary life but humans as social beings cannot separate themselves from the community group. As individuals, humans cannot do what they want only in individuals [1] In addition, humans in everyday life - every day have basic / primary needs, which are the most basic needs and should be fulfilled by every human being. Primary needs consist of clothing, food and shelter. The need for housing is a primary need which must be met by every human being.[2] In our country, Indonesia clearly regulates the place of residence, which is regulated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia or abbreviated as the 1945 Constitution, which states that "Everyone has the right to live in physical and spiritual prosperity, at a live, and get a good and healthy living environment and have the right to obtain health services".[3] Even though in reality not everything in the Article is fully implemented, it is mandatory for the Government to enforce, promote and protect this need.[4] An alternative to solving the problem of settlements where the composition of the population is increasing is to build flats. The apartment developer (Developer) is included in the category of development

actor, whose meaning is enshrined in Law no. 8 of 1999 concerning Consumer Protection (UUPK). In Indonesia itself, the movement and development of the Indonesian Consumers Foundation (YLKI), was established on May 11, 1973, and is considered the beginning of consumer advocacy in Indonesia. When YLKI was founded, the political condition of the Indonesian nation at that time was still overshadowed by a campaign to use domestic products. However, over time, consumer protection movements such as those carried out by YLKI are carried out through official legal corridors, namely how to provide legal assistance to the public for consumers.[5]

The enactment of Law No. 8 of 1999 is a regulation of various matters concerning Consumer Protection. Although the long awaited UUPK has been established, the issue of consumer protection at this time has not diminished, this is due to the low level of public awareness about their rights as a consumer and the actions of business actors who have bad intentions or due to negligence, turned out to have a serious impact on consumers. Compensation that is only given to consumers who suffer losses includes losses directly experienced by consumers due to using a product (only losses due to product damage), and does not cover the consequences (loss of property) caused by using the

product.[6] Then what if the dispute is between Consumers and Business Actors? The UUPK regulates legal protection for consumers and includes the Consumer Dispute Resolution Agency (BPSK) which has the authority to resolve consumer disputes who feel aggrieved by the actions of business actors who are proven guilty. BPSK is an alternative consumer dispute resolution outside the Court to resolve consumer disputes with a small claim court with a maximum material claim value of Rp. 200,000,000, - (Two Hundred Million Rupiah) which is this settlement with simple procedures and proofs. In UUPK, the duties and authorities of BPSK are mandated in Article 52.

PT. Pakkodian does not agree with the consideration of the BPSK Decision because BPSK DKI Jakarta has no absolute authority to examine, hear, and decide on the case because the case is regarding the Default dispute over the sale and purchase of Apartment Units based on Booking Form Number 0093/PK-CV/BF/10 and Number 0060/PK-CV/BF/10, therefore the District Court has the authority to hear and examine the case. Arifin Siman bought the 2 apartment units in 36 installments. Installments 1 – 11 went well, but in the 12th installment which had to be paid on February 24 2012, Arifin Siman paid on February 24, 2012. Arifin Siman reasoned that, from installments 1 – 11, every time he asked for a receipt from the Buyer, the Buyer always avoids and always gives various reasons, so that in the 12th installment, was forced to stop payment not because he was unable to pay, but immediately asked for a response from the Petitioner of Objection, but the Petitioner of Objection still did not respond to the request for a receipt from the Respondent, in good faith Objection to continue the payment of the 12th installment in February 2012 onwards. But if it is seen based on the General Terms and Conditions of the Order Letter that has been agreed upon by the Petitioner for Objection and the Respondent for Objection mentioned in number 10, it is stated in point why: "The seller has the right unilaterally to cancel this purchase if the buyer delays the installment payment for 90 consecutive days from the specified time.". Which means, the Objected Respondent has delayed the installment payment for more than 90 consecutive days, then the Objection Respondent has previously defaulted on the Objection Applicant. Whereas therefore, based on the General Terms and Conditions of the Order Letter in number 10 above, the Objection Applicant has the right to unilaterally cancel the order made by the Objection Respondent. Respondent Objects / Arifin Siman, come to PT. Pakkodian negotiates to be able to continue the buying and selling process. The seller provides conditions if you want to continue, namely by providing details of costs with a total of Rp. 150,000,000 and continued with the signing of the Terms of Condition. In principle, the Respondent of Objection agreed to all the points of agreement, except for point 12. Thus, there was no agreement between the two parties, and there was no legal relationship between the two parties. In short, the Court is of the opinion that the legal relationship between the Petitioners of Objection and the Respondents of Objections is based on a contractual relationship, namely the condition of mutual agreement on the terms that have been mutually agreed upon, namely the binding sale and purchase, in

accordance with Article 1320 in conjunction with Article 1338 of the Civil Code applies as law for both parties. , so that if one of the parties does not fulfill the agreement then what happens is a "default". Considering also that because the legal relationship between the Petitioner's objection and the Respondent's Objection is based on a contractual relationship, namely the condition of mutual agreement on the terms that have been mutually agreed upon, namely the binding sale and purchase, in accordance with Article 1320 in conjunction with Article 1338 of the Civil Code, it applies as law for both parties, so that if one of the parties does not fulfill the agreement then what happens is a "default" thus the authority to adjudicate the a quo case is the General Court.

### ***1.1. Our Contribution***

In addition to the research objectives to be achieved, the benefits to be achieved in this research are as follows:

- A. Theoretical Uses With this research, the author hopes that this writing can contribute thoughts, references and theories to students who are studying Consumer Protection Law.
- B. Practical Use
  - 1) For the author, it is hoped that the results of this research can provide knowledge, experience and additional insight to the author regarding legal science, especially in the field of consumer protection law.
  - 2) For the community, it is hoped that the results of this research can provide knowledge to the public, especially those who are steeped in the field of Consumer Protection Law.

### ***1.2. Paper Structure***

The systematics of writing aims so that this writing can be directed and systematic, so that in this writing the author divides into 5 (five) chapters such as; Backgrounds, Theoretical Framework, Data Research, Analysis, and Closing, and reference list.

## **2. LITERATURE REVIEW**

### ***2.1. Problem Formulation***

Based on the background that has been stated above, the authors raise the formulation of the problem;

1. How the legal ramifications of canceling BPSK Decision No. 001/A/BPSK-DKI/X/2019 in the lawsuit filed by the Petitioner for Objection at the North Jakarta District Court?
2. How the duties and authorities of the Consumer Dispute Settlement Agency (BPSK) in resolving this dispute?

## 2.2. Research Method

### 1. Research Type

The type used by the author in this paper is a normative legal research method. Normative legal research is a process to find a rule of law, legal principles, as well as those faced.

### 2. Types and Sources of Data

#### a. Primary Legal Material

Primary legal materials are legal materials that have an authoritative nature, meaning that they have authority. Primary legal materials consist of:

- 1) Law Number 8 of 1999 concerning Consumer Protection (UUPK);
- 2) Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
- 3) Law Number 20 of 2011 concerning Flats;
- 4) Regulation of the Supreme Court (PERMA) Number 1 of 2006 concerning Procedures for Filing an Objection to the Decision of the Consumer Dispute Settlement Body;
- 5) Kepmenperindag Number: 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Body.

#### b. Secondary Legal Material

Secondary legal materials are all publications on law that are not official documents. What is meant by secondary legal materials here by the author are the doctrines contained in legal journals and the internet, which consist of:

- 1) Textbooks;
- 2) Legal journals;
- 3) Legal dictionaries.

### 3. Research Approach. In legal research there are several approaches. The approach that I will use is:

- a. Legal approach (statute approach);
- b. Case approach (case approach).

In this research, a statutory approach and a case approach are used which aims to study the application of legal norms or rules in legal practice. The statutory approach is carried out by examining all laws and regulations related to the legal issues being handled, what is examined is the consistency and suitability between a law and the constitution or between regulations and laws, the results of the study is an argument to solve the issue at hand. The case approach is carried out by reviewing cases related to the issues at hand that have become court decisions with issues that already have permanent power, the main study in the case approach is Ratio Decidende or Reasoning, namely the court's considerations to arrive at a decision. a verdict.

### 4. Data Collection Techniques

The data collection technique used in this paper is library research, which is collected from archives or library studies in secondary legal materials.

### 5. Data Analysis Techniques

Peter Mahmud Marzuki, quoting the opinion of Philipus M. Hadjon, described the method of deduction as the syllogism taught by Aristotle. The use of the deduction method stems from the submission of the Major Premise (a general statement), then the Minor Premise (which is special), from the two premises a conclusion is then drawn. However, in legal arguments, legal syllogisms are not as simple as traditional syllogisms. This legal research uses data analysis techniques with deductive logic, deductive logic or processing legal materials in a deductive way, namely explaining something general and then drawing it into a more specific conclusion. The analysis is carried out by examining cases related to the issues at hand which have become court decisions that have permanent legal force, namely North Jakarta District Court Decision Number 689 /Pdt.Sus-BPSK/2019/PN Jkt Utr.- Then make an inventory and identify the laws and regulations, then analyze the related cases and the laws and regulations by interpreting the laws, to then draw conclusions from the results of the analysis.

## 3. CONCLUSIONS

Based on the analysis above related to the research that has been done, the author can draw the conclusion that;

1. It is possible for BPSK decisions to be filed for objections, whether decisions through Conciliation, Mediation, or Arbitration. The arbitration award may be annulled if: the letter or document submitted in the examination after the award is rendered is admitted to be false or declared false; and, found documents of a decisive nature, which were hidden by the opposing party; or Decisions are taken from the results of deception carried out by one of the parties in the examination of the dispute. The annulment attempt is not an ordinary legal remedy, but an extraordinary legal remedy which is different from an appeal in the ordinary justice system. In this case, BPSK's authority is to examine cases based on unlawful acts (PMH), so that compensation can be requested. A lawsuit based on the existence of a Default, legally cannot ask for compensation, but the fulfillment of achievements that have not been carried out. The subject matter of default is not included in the authority of BPSK. Therefore, it is natural for the North Jakarta District Court to cancel the DKI Jakarta BPSK Decision, where the legal consequences of the cancellation of BPSK Decision No. 001/A/BPSK-DKI/X/2019 in the lawsuit filed by the Petitioner for Objection at the North Jakarta District Court hereby cannot be executed/implemented and the decision is deemed to have never existed.
2. The duties and authorities of the Consumer Dispute Settlement Agency (BPSK) in resolving consumer disputes based on Law no. 8 of 1999 concerning consumer protection (UUPK) can be done through court or out of court. Out-of-court dispute resolution is carried

out by BPSK by means of Mediation, Conciliation, and Arbitration. This body is a small court (Small Claim Court) which conducts trials by producing decisions quickly, simply and at low cost in accordance with the principles of justice. In other words, the duties and authorities of BPSK in this case are in accordance with Article 52 paragraphs (1), (2), (5), (6), (7), (8), (10), (11), and (12) Law No. 8 of 1999 concerning Consumer Protection.

#### 4. SUGGESTIONS

Based on the analysis above related to the research that has been done, the author can give suggestions that:

1. The government should be able to correct conflicting legal provisions, including the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency Article 42 paragraph 1 regarding the nature of BPSK decisions and Article 41 paragraph 3 regarding legal efforts to object to the BPSK decision, so that problems do not arise in the future. And also given more training - training to BPSK so that it can sort out which cases are under its authority and which are not its authority, so that there are no problems in this decision, namely adjudicating those who are not within their authority.
2. The National Consumer Protection Agency (BPKN) together with the Consumer Dispute Settlement Agency (BPSK) should be able to work together to conduct socialization or introductions regarding consumer protection as well as dispute procedures at the Consumer Dispute Settlement Agency in accordance with applicable regulations.

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