



Juridical Study of Decisions of the Consumer Dispute Settlement Agency Outside the Court in Electronic Trading

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Abstract. The purpose of this study is to find out how the effectiveness of the consumer dispute settlement agency (BPSK) outside the court in electronic trade dispute resolution and how the binding power of the decision of the consumer dispute settlement agency outside the court in electronic commerce. BPSK has the authority to settle consumer disputes out of courts, such as through mediation, conciliation, and arbitration. It is regulated in UUPK article 54 paragraph (3) “the decision of the BPSK assembly is final and binding, so it is not possible to file an appeal, but it is regulated In Article 56 Paragraph (2) of the UUPK, it turns out that the parties can still file an ‘objection’ to the District Court no later than 14 days after the BPSK notification so that this creates uncertainty, even contradictions between rules. This research used a normative research method.

Keywords: BPSK Decision · Out of Court · Electronic Trading

1 Introduction

Dispute resolution outside the court is possible in trade transactions through the electronic system if the parties choose and agree on a contract. Article 18, paragraph (3) of the ITE Law states that the parties can determine the choice of law to be used in resolving disputes. [1] Referring to the Consumer Protection Law, alternative dispute resolution outside the court can be done through direct compensation by peaceful means (Article 19 of the Consumer Protection Law) and through the Consumer Dispute Settlement Agency (BPSK) as regulated in Article 23 in conjunction with Article 1 number 11 of the Protection Law. Consumer. In the event of an e-commerce consumer dispute, consumers can take advantage of the role of BPSK. Based on the mechanism, settlement through BPSK will be faster than if the dispute is brought to litigation (court). [2].

Law Number 8 of 1999 (UUPK) stipulates the equality of the position of consumers with business actors and provides an alternative way by providing dispute resolution out of court through conciliation, mediation, and arbitration. It is intended to overcome the long and formal court process. The Consumer Dispute Settlement Agency (BPSK),

which is expected to be able to provide a fair settlement to the disputing parties based on the existing legal provisions, turns out to be an imbalance in its implementation and creates confusion for the parties involved in the implementation process, especially when the entry is made. The role of the judiciary in examining objections to the BPSK decision. It must be admitted that the Consumer Protection Act, which regulates BPSK, in addition to not paying special attention to the examination stage at BPSK as the first institution to deal with the problem of violations of consumer rights, also ignores provisions relating to the role of the judiciary, when it should regulate the relationship BPSK with the role of the court must be regulated because it will have implications for its implementation. [3].

In settling disputes out of court through BPSK based on Article 52 of Law no. 8 of 1999 concerning Consumer Protection, BPSK has the authority to handle and settle consumer disputes by means of mediation, conciliation, and arbitration. Settlement of consumer disputes out of court is held to reach an agreement regarding the form and amount of compensation or regarding certain actions to ensure that the losses suffered by consumers will not occur again [4] in settlement of consumer disputes out of; court in the context of electronic commerce, there are no clear legal rules for filing cases or disputes through the online system. As a result, it will create confusion about how the parties should file a lawsuit. Even though the current development of globalization, all transactions are carried out using an online system [5].

Furthermore, settling consumer disputes out of court is still very concerning because no regulation specifically regulates the settlement of consumer disputes outside the court in the context of electronic commerce. It means that there are weak regulations governing the protection of consumers in electronic commerce. The technical settlement of consumer disputes outside the court is still not widely used by the aggrieved parties. It is not due to the ignorance of the parties but rather due to the strength of the results of the implementation of existing agreements and decisions through the Consumer Dispute Resolution Agency (BPSK), both through mediation, conciliation, and arbitration which are considered not to have a strong binding power compared to court decisions. It can be seen in Law No. 8 of 1999 concerning Consumer Protection that BPSK is positioned as an agency with authority to examine and decide but is not accompanied by instruments to implement its decisions. So it can be concluded that BPSK is not a body that has a judicial function. The existence of BPSK is expected to be part of the equitable distribution of justice, especially for consumers who feel aggrieved by business actors. The BPSK decision is final and binding, so it does not need to be submitted to the court. Still, in its implementation, there are various obstacles. The weak point of this BPSK institution is that it is still possible for a BPSK decision to be objected to a district court by an aggrieved party. The basic principle of BPSK's decision is final and binding because BPSK was formed to settle consumer disputes with small demands. [6].

Article 54, paragraph (3) of the UUPK clearly states that the decision of the BPSK assembly is final and binding, and it is no longer possible to file an appeal. However, in Article 56, paragraph (2) of the UUPK, there is still an opportunity to file an "objection" to the District Court after BPSK's decision is notified. It causes the problem of legal certainty so that it is possible to object to the BPSK decision, which will weaken the motivation of any party to sit in negotiations to resolve the dispute outside the court.

In this case, we can see and admit that the UUPK ignores the provisions relating to the judiciary. The judiciary's role is not regulated, even though this arrangement has important legal implications. That's why most people resolve consumer disputes in electronic commerce through litigation (courts). [6].

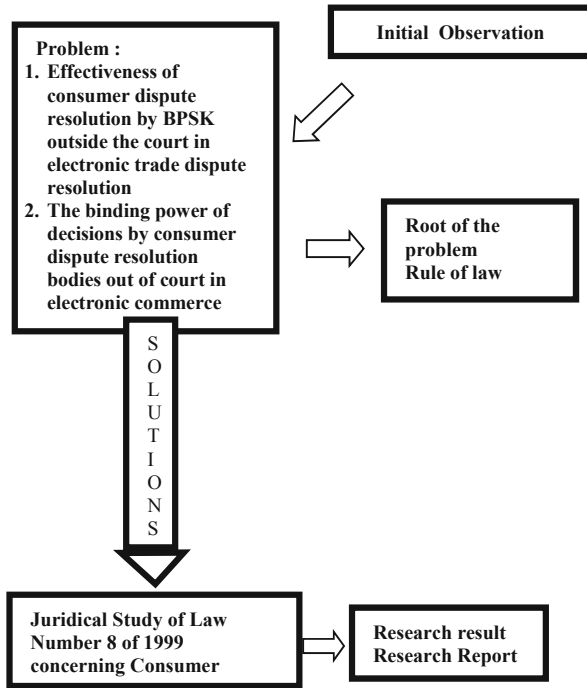
Based on Article 54, Paragraph (3) of the Consumer Protection Law, BPSK decisions resulting from conciliation, arbitration, and mediation are final and binding. Last means and as something that the parties must carry out. The principle of *res judicata pro vitiat*, a decision where it is no longer possible to take legal action, is declared a decision with definite legal force. Based on this principle, the BPSK decision should have permanent legal power (*Inkracht Van Gewijsde*). However, compare this principle with Article 56 Paragraph (2) of the Consumer Protection Law. It turns out that the parties can still file an 'objection' to the District Court no later than 14 days after the BPSK notification. Thus, it will extend the time for resolving consumer disputes while increasing the burden of court costs that the parties must bear. It is contrary to the nature of the BPSK decision, which is final and binding. Problems also arise during execution. In order to have the power of execution, the BPSK decision must be asked for a determination (*fiat execution*) by the court. In practice, asking for an execution determination is impossible because there are no regulations or instructions on the procedure for filing an objection to the BPSK decision. Supreme Court Regulation (MA) No. I of 2006 on how to file a complaint to the BPSK decision essentially only regulates the filing of an objection to the BPSK decision. Article 2 of this Supreme Court Regulation (MA) confirms that those who can file a complaint are against the BPSK arbitration decision. Meanwhile, objections regarding conciliation or mediation decisions and the determination of execution are not regulated at all. So it can be concluded that BPSK is not a judicial institution. [7].

Based on the problems listed in the background problems related to the decisions of the consumer dispute settlement agency (BPSK) outside the court in electronic commerce, therefore the author is very interested in researching "Juridical Studies on the Decisions of the Consumer Dispute Settlement Agency (BPSK) outside Court in Electronic Commerce."

2 Method

This research is normative, namely library research that examines written laws such as laws, theories, history, comparisons, structures, scopes, materials, and general explanations from the article by article, which prioritizes or binds aspects of the Act, not applied or implementation aspects.

Framework Of Thinking



3 Results and Discussion

1. Effectiveness of consumer dispute resolution by BPSK outside the court in electronic trade dispute resolution

The Consumer Protection Law allows disadvantaged consumers to sue business actors through general courts. But, if consumers want to resolve disputes with business actors out of court, the Consumer Protection Law provides an agency formed by the government specifically to resolve consumer disputes with business actors. The agency established by the government is the Consumer Dispute Settlement Agency (BPSK) and/or the Non-Governmental Consumer Protection Agency (LPKSM), registered and recognized by the government, that has activities to handle consumer protection for the settlement of the dispute. [8].

The existence of the Consumer Dispute Settlement Agency (BPSK) is expected to be able to resolve conflicts between business actors and consumers on a conciliatory basis, even though they are not getting good attention from local governments. It is evidenced by the number of regions that do not yet have a BPSK institution. In the judicial context, many BPSK decisions do not get executive power from the court and are even annulled by the Supreme Court.

The facts above show that there is still uncertainty in enforcing consumer protection laws. The Consumer Protection Law (UUPK), which should be the basis for implementing consumer protection, still seems to have many loopholes and does not move when faced with other laws.

BPSK, which should be the foundation of hope for the community in seeking justice for the rights that business actors have harmed, has not looked sharp and authoritative in resolving consumer disputes. The many decisions evidence it that the court annuls. This fact also illustrates that so far, what has been decided by BPSK seems unable to resolve the problem because it is difficult to obtain executive power and permanent legal force by the court. [9].

As we all know, the only regulations supporting the BPSK so far are the UUPK and the Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 regarding the implementation of the duties and authorities of BPSK. The two rules are still very limited, unclear, and even contradict each other in some situations. This situation will affect the strength of the product or output produced by BPSK; the impact is that when the judiciary tests a legal product, the BPSK decision must be annulled, and the cause is its weak legal basis. A law or regulation will be effective if the community behaves as expected or required by law to achieve the desired goal, then the effectiveness of the law or regulation must be completed. Talking about the effectiveness of the law means talking about the power of law in regulating and/or forcing people to obey the law itself. From the description above, if it is related to the effectiveness of BPSK as a consumer dispute resolution agency, then the institution can be said to be effective if: a) Good legal instruments, complete, systematic, and not contradictory in one system order; b) Having adequate and well-maintained infrastructure, including qualified human resources; c) BPSK decisions can be respected and implemented properly; d) Supported by public awareness about their rights and obligations as consumers [10].

The Consumer Dispute Settlement Agency (BPSK) in Indonesia is an agency or institution in charge of handling and resolving disputes between business actors and consumers outside the court; because there are quite a several problems in the District Court that cannot be resolved, the government gives authority to this agency. The Consumer Dispute Settlement Agency (BPSK) is independent under the guidance of the Ministry of Trade or the central government. [11].

BPSK, as a dispute resolution institution, certainly has an output in the form of a dispute resolution decision. It should also be noted that in relation to this BPSK decision, it is divided into three types of decisions: BPSK decisions by conciliation, mediation, and arbitration. What distinguishes the decision is the substance of the decision. The BPSK decision by way of arbitration contains the contents of the case and its legal considerations. Meanwhile, decisions utilizing conciliation and mediation are issued solely based on a peace agreement made and signed by both parties to the dispute. [12].

Effectiveness has various types, one of which is organizational effectiveness. The effectiveness of a thing is defined as success in achieving the targets or goals set. As with the theory of effectiveness in general, experts also have various views on the concept of organizational effectiveness. Measures that state a target in achievements such as quality, quantity, and time are benchmarks for the occurrence of effectiveness. The higher the percentage in achievement, the better the level of effectiveness through a comparison of

levels of 100% very effective, through a comparison of the accomplishments of 91%–99% only effective, comparison of achievements 90% and below indicate ineffectively. Regarding the usefulness of the law, it means discussing the law's work energy in controlling and/or forcing people to obey it. Factors that affect effectiveness can be seen from the role of a good law. Legislation can be seen as efficient if the community obeys the regulations that the desired expectations have been achieved. From the theoretical explanation above, the Consumer Dispute Settlement Agency (BPSK) can be said to be efficient if it has optimal facilities and infrastructure, decisions that can be carried out properly, public awareness of rights and obligations, and legal regulations that do not conflict with other regulations. [13].

From the various explanations above, the author sees that dispute resolution by BPSK is ineffective. It is because the legal arrangements or legal basis governing BPSK's actions have not explicitly positioned BPSK as a strong institution, especially regarding the article that stipulates that BPSK decisions are final and binding while, on the other hand, if the parties object, it can be tried through the courts, this proves that there is an inconsistency in the legal arrangements of the BPSK institution. Even though as a strong institution, its decisions must be respected and carried out by the disputing parties.

There are several contradictory (inconsistent) provisions; for example, Article 54 paragraph (3) of the UUPK stipulates that the decision of the BPSK assembly is final and binding. It means that there is no possibility of any legal action against the BPSK decision. However, in article 56, paragraph (2) of the UUPK, it is regulated that the parties can file an objection to the BPSK decision to the District Court. It means that BPSK's decision is not final. Even in article 58, paragraph (2) of the UUPK, it is increasingly emphasized that the BPSK decision is not final because of the decision of the District Court on an objection to the BPSK decision. The parties can still file an appeal to the Supreme Court. In addition, there are also many unclear provisions, such as: what is meant by an objection submitted to the district court. How the court must examine and adjudicate the complaint, whether the determination of the execution of the BPSK decision is mandatory or facultative, whether an advocate can accompany the litigation at BPSK, why the BPSK decision can only be preliminary evidence in the investigation, what if the parties do not agree upon the settlement method what the legal consequences if the dispute resolution exceeds the time limit determined by the UUPK, and many other provisions technically confuse the operationalization of BPSK [14].

2. The binding power of decisions by consumer dispute resolution bodies out of court in electronic commerce

The establishment of the Consumer Dispute Settlement Agency (BPSK) is based on the follow-up to the establishment of Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK establishes an institution to protect consumers, namely BPSK. Article 1 point 11 states that "BPSK is a body tasked with handling and resolving disputes between business actors and consumers." The real main objective of BPSK is to resolve small and simple consumer disputes. Based on the provisions in Article 52 letter a of the UUPK, it is emphasized that the duties and authorities of BPSK are to handle and settle disputes by means of mediation, arbitration, or conciliation. The procedure for resolving consumer disputes through BPSK is regulated in the Decree of the Minister of

Industry and Trade No. 350/MPP/Kep/2001. Settlement of consumer disputes by BPSK and using arbitration is carried out by an assembly formed by the chairman of BPSK. The assembly acts as an arbitrator. The number of these assemblies is odd, at least 3 (three) people, which includes the roles of government, business actors, and consumers. Consumer Dispute Settlement must be carried out no later than 21 working days, calculated from when BPSK receives the application. The final and final nature of the BPSK decision is contained in Article 54, paragraph 2 of the UUPK. The decision is handed down within a grace period of 21 days from the date the lawsuit is received by BPSK (Article 55 of the UUPK in conjunction with Article 38 SK 350/MPP/Kep/2001). Article 40 Decree of the Minister of Industry and Trade No. 350/MPP/Kep/21/2001 confirms that the decision issued by BPSK is only limited to 3 alternatives, namely, a) Peace. b) Lawsuit Rejected. c) The lawsuit is granted.

In the decision, if the lawsuit is granted, the business actor will be obliged to: 1) Compensation for damage, pollution, and loss of consumers due to consuming goods and/or utilizing services. 2) Administrative sanctions, in Article 60 UUPK, is a special right for BPSK as an alternative institution. In Article 60 paragraph (2), in conjunction with Article 60 paragraph (1) UUPK, administrative sanctions that BPSK can impose are in the form of the stipulation of compensation up to the maximum Rp. 200,000,000- (two hundred million rupiahs) for business actors who violate or, in the context of not implementing the return of compensation [15].

In Indonesia, in legal efforts against BPSK decisions, several articles in the Consumer Protection Act can be used as a legal basis, namely Article 54 paragraph (3), Article 56 paragraph (2), and Article 58 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection. The provisions of Article 54 paragraph (3) state that “the decision of the BPSK assembly is final and binding.” In the elucidation of Article 54, paragraph 3, it is emphasized that the word “final” means that there are no appeals and cassation attempts. Then the status of the decision has definite legal force (Inkrack Van Gewijsde). Article 56 paragraph 2 states that “The parties may file an objection to the District Court no later than 14 (fourteen) working days after receiving notification of the decision” and Article 58 paragraph 2 that “To the decision of the District Court as referred to in paragraph 1, the parties in no later than 14 (fourteen) days can file an appeal to the Supreme Court of the Republic of Indonesia”.

According to Mariam Darus Badrulzaman, the principle of binding power is that the parties' binding to the agreement is not only limited to what was agreed but also several other elements as long as it is desired by custom and etiquette, and morals. [16].

In article 54, paragraph (3), there is a decision of the BPSK assembly which is final and binding. Being final means that the legal decision does not require further legal remedies. Final means that it is definitive and, therefore, can have legal consequences. With the issuance of a final decision, the dispute has been examined, terminated, or decided automatically. The final decision is the court's last action in determining the parties' rights in resolving all issues in a dispute, and the disputing parties must submit to and implement the final decision. While the BPSK decision is binding, binding means giving the burden of legal obligations and demanding compliance from legal subjects. [17] Talking about the binding power of the BPSK decision, it does not yet have final and binding force because there are further legal remedies contained in Article 56 paragraph

(2) and 58 paragraph (2), which still provide opportunities for consumers and business actors to appeal until to appeal. [17].

The existence of legal remedies in the BPSK decision is final and binding, raising doubts that the BPSK decision is final and binding. Settlement of consumer disputes through arbitration at BPSK adheres to the same principles in the examination process; however, there are deviations from the arbitration principle in resolving consumer disputes through arbitration at BPSK, namely the principle of final and binding decisions. In the UUPK, although there are provisions regarding BPSK decisions that are final and binding, there are also provisions regarding legal remedies for the decision, so that the final meaning that there should be no more legal remedies that can be taken by parties who object to the arbitral award becomes invalid. With the existence of legal remedies against the arbitration decision by the BPSK assembly, which are final and binding, then indirectly, the principle of arbitration authority is also accompanied if one of the parties rejects the decision and files an objection based on the provisions stipulated by UUPK, then the court that should not be authorized in absolute terms to adjudicate cases that had previously been agreed to be resolved through arbitration to become involved in settlement of the consumer dispute. It shows that the legislators want court intervention to resolve this consumer dispute. It means that the legal force of the decision from BPSK is still legally dependent on the court's supremacy, so it is not final and binding. [18].

The following are legal remedies for arbitration decisions in the settlement of consumer disputes at BPSK as follows: a) Consumers and business actors who reject the BPSK decision can file an objection to the district court no later than 14 (fourteen) working days from the notification of the arbitration decision (Article 56 Paragraph (2) UUPK; b) The District Court is obliged to issue a decision no later than 21 (twenty-one) working days from the receipt of the objection; c) If consumers and business actors reject the decision (fourteen) working days, they can file an appeal to the Supreme Court of the Republic of Indonesia; d) The Supreme Court is obliged to issue a decision no later than 30 (thirty) working days from the receipt of the appeal. [18].

So it can be concluded that the legal force of the BPSK decision is final and binding contained in Article 54 paragraph (3), not yet truly final and binding because there are still further legal remedies contained in Article 56 paragraph (2) and Article 58 paragraph (2). In addition, after the BPSK decision, implementing the decision depends on the District Court, which is one of the institutions in judicial power and has legitimacy in forcing the implementation of the decision. The procedure for implementing the decision is regulated in Article 195 HIR. The UUPK, in this case, explains in Article 57 that execution can be requested for an execution determination from the District Court. This provision is also supported by Kepmenridag No.350/MPP/12/2001 that the party submitting the execution is BPSK. The obstacle in the application for execution of the BPSK decision is due to the fact that the BPSK decision does not include Irah-Irah, in contrast to the BPSK decision, which includes Irah-Irah, in Article 54, paragraph 1 point a of the Arbitration Law affirms that an arbitration award must contain irahs "For the sake of justice Based on God Almighty, so that if there is no inclusion of these irahs, the decision will be null and void by law. [15].

4 Conclusion

1. Based on the author's research and investigation, BPSK is an out-of-court consumer dispute resolution institution expected to be a way out for the community, apparently not by the facts on the ground. It is because BPSK is not an efficient and effective solution. After all, BPSK is not the final solution because BPSK's decision can still be disputed in the realm of the court, indeed in the implementation of dispute resolution through BPSK it is very efficient, but the decision which is not binding is the resolution of consumer disputes at BPSK is not again effective.
2. BPSK's decision has no binding power and does not have executive power; from the factors of this law, it can be seen in Article 54, Paragraph 1, and Paragraph 2 of the Consumer Protection Law, which stipulates in paragraph 2 that the BPSK decision can take legal action in court if there are parties who object to the decision. In addition, the problem with the weakness of the BPSK decision is the absence of the word "Irah," namely "For Justice Based on the One Godhead" in the BPSK decision.

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