

Small Claim Procedure:

A New Concept on Consumer's Dispute Settlement in Indonesia

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Abstract—The article aims to analyze the current consumer dispute resolution and identify constraints in its practice. This type of research is normative legal research conducted by utilizing library data and secondary data in the form of legal principles, norm of procedure law, and comparative law. The results show that the practice of consumer dispute settlement through districts has been undertaken in accordance with the prevailing laws, graded procedure and high-cost expenses in maintaining the consumer dispute through the District Court. Finally, this article recommends a new concept of consumer dispute settlement in Indonesia by applying small claim procedure method to create effective and efficient law and provide legal certainty and access to justice.

Keywords—consumer law; dispute settlement; small claim; procedure law

I. INTRODUCTION

Indonesia is a state law. A country can be classified as a state law (rule of law) if such country has put the superiority of law as the rule of game (fair play) in the government management, particularly in preserving order and protecting the citizen rights. In line with the abovementioned, John Locke in "Second Treatise of Government" has indicated three minimum elements for a state law, among others is the existence of institution that provides dispute settlement for its citizens [1].

Conflict or dispute is a contradiction of opinion between two or more persons than can be settled in court. Dispute in commonly happened in a society, when people are interacted each other and they have different perception, interest and pretension towards an occasion or situation [2].

The Supreme Court realized that this condition is potentially set aside the truth, justice and legal certainty for disputing parties, and the end, the disputing parties also suffer economic lost [3]. Accordingly, the court deemed not effectively and efficiently examines and renders dispute among the disputing parties thereto. In the other hand, the court remain provides legal certainty under its formal decision. One of the out-of-court dispute settlement is consumer dispute settlement as stipulated in Law Number 8 Year of 1999 re: Consumer Protection (hereinafter to be referred to as "UUPK"). Such regulation stipulates that a consumer dispute can be settled through *Badan Penyelesaian Sengketa Konsumen* (Consumer

Dispute Settlement Body) (hereinafter to be referred to as "BPSK"). Such settlement can be conducted through arbitration, mediation, consolidation in BPSK or through ligation in the District Court. Consumer dispute settlement through BPSK is simple, prompt and less cost, however, each of disputing parties may submit for an appeal against the BPSK award through the District Court. Upon such appeal against the BPSK award, the panel of judges may also render decision to order annulment of such award.

Basically, citizen has the right to elect the forum in settling their civil dispute, whether through court or out-of-court. However, as mandated by the Indonesia Constitution, the judicial body (court) shall improve and develop its system in order to provide excellent court for the benefit of citizen who seeks for justice. In the other side, the out-of-court dispute settlement system shall also be reformed to maintain the excellent procedure that can provide a prompt and simple procedure.

Up to this moment, the procedure law used in court litigation is remain accordance with *Het Herziene Indonesische Reglement* (HIR) under Stb 1848 No. 16 jo. Stb 1941 No. 44 / *Reglement Buitengewesten* (RBg) as the legal source of Indonesian Civil Procedure [4]. Considering that such regulation is inherited from the past Dutch colonialism, many of the substation are no longer relevant for the current use.

Prior to 2015, the same legal procedure applied and valid for any type of civil claim, without considering the amount of the claim. Under the Regulation of Supreme Court Number 2 Year of 2015 re: Small Claim Procedure (hereinafter to be referred to as "Regulation of Small Claim Procedure"), the Supreme Court introduces small claim procedure with the claim amount maximum at Rp. 200 Million.

Pursuant to the recent research, the Small Claim Procedure is effectively applied in practice, especially in several cities. However, this Small Claim Procedure does not revoke the existence and authority of BPSK and LAPS. This is because such Regulation of Small Claim Court has lower grade in the regulation grading system if compares with the regulation of BPSK and LAPS. Further, the Regulation of Small Claim Procedure does not specifically mention anything about consumer dispute, even though majority of the consumer dispute is at the amount below Rp. 200 Million.

Basically, the Regulation of Small Claim Procedure is adopting Small Claim Court (“SCC”). SCC is a civil claim procedure with small claim amount, simple, informal, prompt procedure, less cost (small claim procedures/SCP). By applying the SCP/SCC, the claim will be examined and rendered in less term period if compared with the other regular civil claim.

In some other countries’ practices such as Australia, Singapore, United States and Japan, the small claim procedures applied to examine and render decision civil claim with claim amount not more than 100 million. In Singapore, for more than 200 million claim amount can also be settled with the small claim procedures save as the disputing parties agree in writing [5]. In Europe, since 2009 for example, countries in European Union, except Denmark, have implemented small claim procedure with civil claim amount not exceeding 2000 Euro, and majorly settling consumer dispute [6]. Those facts indicate that the small claim procedure has become the bridging between the consumer dispute settlement litigation and non-litigation, and in its development has reached the settlement of other extensive civil claim.

Ideally, in the future, the small claim procedure in Indonesia shall be applied not only to examine and render decision small amount business claim, but also to examine consumer dispute as currently conducted in other countries, both with common law system and civil law system. The small claim procedure shall extend the authority of the court by giving authorization to examine and render decision in consumer dispute claim.

This article is important to be presented since currently, consumer dispute settlement conducted in several procedures especially out-of-court procedures and mostly do not provide satisfaction for the disputing parties and practically cannot be executed. Further, the existence of court also deemed not fulfill the effectiveness in examining the dispute. Accordingly, the development in law shall be conducted through re-actualization of law (regulations) and judicial institution reform, in order to fulfill the requirement of modern society, high technology, advanced trading and global economic development.

II. METHOD

Method of approach used in the research for this article is normative research, specifically concern on library data, or secondary data in the form of legal principles, norm of civil procedure law and comparative law [7]. Approach through legal principles is research towards legal norm as guidance of appropriate human act [8]. Pursuant to the applied approach method, the research is conducted to the norm and principle available in primary legal document, secondary legal document and tertiary legal document, including *iusconstitutum* related to the research and create *iusconstituendum* as an ideal norm to be manifested.

III. RESULT AND DISCUSSION

The complexity and high competition in business transaction, both domestic and international, is potentially arise many disputes. Disputes arise from the business activities or

commercial business generally named as business and commercial dispute (hereinafter to be referred to as “business dispute”). According to UNCITRAL Model Law [9], The term commercial should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature include, but are not limited to the following transactions; any trade transaction for the supply of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploiting agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passenger by air, sea, rail or road.

The business dispute as discussed in this article is limited to small amount dispute or claim among the legal subject or towards certain business dispute such as consumer dispute.

As discussed earlier, the dispute settlement through a court is using the prevail civil procedure law, namely HIR/RBg. The judges at the District Court shall also consider several stipulation in Rv since many subject is not regulated in HIR and accordingly shall refer to Rv [10]. The regulation in court litigation pursuant to HIR/Rbg does not distinguish the claim based on the amount of the claim, HIR only divides it to the claim submitted to the court [4] as a claim/sue (Article 118 HIR/142 RBg) or application.

According to information given by the Head of Central Jakarta District Court, within 3 years (2012-2015), the Central Jakarta District Court has examined and rendered decision with large claim amount, mostly in relation with breach of contract. On the other side, I Gde Ngurah Arya Winaya, Secretary of Surabaya District Court states that Surabaya District Court (one of the major cities in Indonesia), has examined and rendered decision in business dispute with large claim amount and also with small claim amount (Rp. 100-200 Million), such disputes arise from loan agreement and security object transfer, in banking and other financial services transaction. Further, within 3 years (2012-2015), there are several appeal against decision/award of BPSK (Consumer Settlement Dispute Body) or KPPU (Supervisory Board of Business Competition) that submitted to such district court.

The examination of appeal against the BPSK decision is conducted in the District Court within a limited time frame. One of the grounds of appeal against the BPSK decision is generally regarding the absolute competency of BPSK, as described in several cases:

A. *Decision No. 468/Pdt.Sus.BPSK/2015/PN Medan*

PT Verena Multi Finance against Elfin. The decision of District Court is annual the Decision of BPSK, and grant the claim submitted by the plaintiff with following consideration:

“That BPSK has no authorization to examine and render decision in such case since both disputing parties has elected district court to settle any dispute among them.”

B. *Decision No. 227/Pdt.BPSK/2015/PN Btm*

PT. Adira Dinamika Multi Finance (Tbk) against Malfrida Nababan. The objection filed by the plaintiff is that BPSK has

exceeded its authority to render dispute between the Plaintiff and the Defendant. Towards such appeal, the District Court render decision to grant the appeal submitted by the Plaintiff based on consideration that the agreement between the disputing parties cannot be classified as consumer dispute as stipulated in UUPK.

Some researches were also conducted towards BPSK in Bandung and Yogyakarta (both are major cities in Indonesia).

The principles of prompt, simple and less cost in settling the dispute are generally have been applied in practice. Further, in some BPSK, the parties are free of charges. This is also in line with the purpose of the establishment of BPSK to assist the duty of district court. The decision rendered by BPSK is merely compensation to indemnify the loss incurred by consumer and decide several action to guarantee the right of such consumer [11]. BPSK is authorized to decide the material compensation and is not allowed to decide the immaterial compensation.

BPSK is more like a formalized *adat* [traditional] institution, and accordingly, the performance of the settlement is fully depending on the willingness and good faith of the disputing parties. In practice, the appointment of BPSK as a

settlement forum is pursuant to written or oral consent of the disputing parties. The majority dispute settled in BPSK Bandung is the dispute in transfer of receivables of banking and financial services institution, especially receivables guaranteed by motorcycle [12], meanwhile the majority disputes examined by BPSK of Yogyakarta is leasing, banking and housing disputes. However, after 2016, BPSK of Yogyakarta has rejected disputes in respect of banking transaction since there is new regulation in respect of alternative dispute resolution in financial services [13]. Below are statistic chart describing the dispute number examined by BPSK of Bandung and BPSK of Yogyakarta:

TABLE I. DISPUTES SETTLED BY BPSK OF BANDUNG YEAR OF 2012-2015.

No	Year of	Number of Disputes
1	2012	20
2	2013	18
3	2014	17
4	2015	14
5	2016 (April)	6 (arbitration)

Source: BPSK of Kota Bandung

Based on table 1 is the statistic chart describing the number of disputes examined by BPSK of Yogyakarta:

TABLE II. DISPUTES SETTLED BY BPSK OF YOGYAKARTA YEAR OF 2012-2016.

No	Year of	Number of Claim	Mediation	Consolidation	Arbitration	Award	Desc.
1	2012	16	9	6	1	16	
2	2013	26	12	2	1	15	4 is rejected
3	2014	31	13	1	1	15	
4	2015	61	13	4	7	23	4 is discontinued
5	April 2016	13	1	1	0	2	

The examination of dispute in BPSK is also applying the “*verstek*” procedure (absence of the defendant). It happened several times at BPSK of Yogyakarta when the defendant refused to attend the hearing in BPSK due to BPSK incompetence reason.

In practice, the submission of claim through BPSK is addressed to the nearest BPSK office. The claim can be submitted written or orally. The first important thing to be examined by BPSK is whether BPSK is entitled to examine and render decision. Further, the examination of the claim will be the examination of evidences. Below is the procedure of consumer dispute settlement in BPSK:

C. Phase of Claim Submission

The damaging consumer can submit claim application in written to BPSK, and the consumer will receive a receipt. If it is orally submitted, then the BPSK official provide record in a form. If the claim has fulfilled the requirements, then the summons to the disputing parties will be conducted. The parties are allowed to choose the settlement method, namely mediation, consolidation or arbitration.

D. Phase of Examination (Hearing).

The examination hearing is closed for public. UUPK stipulates the time frame to examine consumer dispute settlement is 21 days. In practice, the time frame needed is less

than 21 days if the document and information is sufficiently provided to BPSK. The mechanism to settle the claim is fully elected by the parties, and the available mechanism is not graded. BPSK shall firstly settle all claim in amicable manner.

1) *Examination of dispute through conciliation:* The settlement dispute through the conciliation is conducted by the disputing parties itself and passively accompanied by the panel of BPSK. Accordingly, BPSK render the settlement fully to the disputing parties, including any compensation given (if there is any). The decree(result) of the settlement among the disputed parties shall be made in written and dully signed by the disputed parties. Afterwards, such decree is delivered to the panel of BPSK, and the panel will render the binding decision based on such conclusion given.

2) *Examination of dispute through mediation:* The dispute settlement through mediation is conducted by the disputed parties and accompany by mediator. The function of mediator is to facilitate the parties, the mediator shall not provide solution. The agreement achieved is totally the consent of the disputed parties. The role of BPSK in mediation is limited to summon the parties, witness or expert, provide forum, and encourage the parties to settle the claim in amicable manner, provide advice pursuant to the applicable law. The result (decree of the mediation is submitted to BPSK and strengthened in a Decision of Panel.

3) *Examination of dispute through arbitration:* Arbitration is a non-litigation dispute settlement which is more formal than conciliation and mediation. The arbiters are appointed by the parties and lead by an arbiter from the government element. At the first hearing, the head of panel shall persuade the conciliation (agreement) of the disputed parties. If it is agreed, the panel will render decree of conciliation/agreement.

At the first hearing, prior to the response read out by the defendant, consumer can revoke its claim by writing a claim revocation statement and the panel instantly announce the claim revocation. If at the second hearing, the consumer does not attend the hearing, the claim is null by law, and if the plaintiff does not attend the hearing, then the claim will be rendered in absence of the plaintiff (*verstek*). In mediation and conciliation, the final result name as decree (conclusion) pursuant to the consent of the disputed parties, whereas in the arbitration such result named as decision.

E. Phase of Decision

The decision of the panel of BPSK can also be in the form of strengthening the consent of the disputing parties as stipulated in the written agreement dully signed by the parties (result of conciliation or mediation), and can also be in the form of decision signed by the head and member of panel (result of arbitration).

F. Phase of the Execution of the Decision

The Decision rendered by BPSK shall only decides whether or not the consumer suffers damages and also decides the compensation that shall be paid by the entrepreneur to the consumer. BPSK has no competency to execute its own decision. In order to attach the executorial title in such BPSK decision, fiat execution shall be applied to the district court in the territory of the consumer, and accordingly the execution can be performed.

Pursuant to the primary data at BPSK of Bandung and Yogyakarta, the majority claims submitted to BPSK is settled in through mediation [13]. Arbitration is generally being elected if the dispute among the parties cannot be settled through mediation [13], and the mechanism provided at BPSK is not graded. The major problem in consumer dispute settlement occurred in the phase of execution. Many of the decision cannot be executed due to several reasons. Generally, many defeated party submit for annulment of decision though the district court.

The authors are in an opinion that the reform in judicial system for the law development of a country can be achieved if the public legal services can be performed in effective time frame, simple procedures, and affordable cost. Basically, the judicial system principles are already well set forth in several regulations, however the barrier in practice is often occurred due to the complicate procedure at the court. The principle of prompt is in relation with time required to examine the claim started from the submission of claim up to the decision rendered by the judge. If the examination of the dispute (claim) can be conducted promptly and simple, then the cost will also be lower.

The prompt procedure conducted in examining the small clam is a huge step taken by the Supreme Court as the part of the reform to the judicial system. This prompt procedure is not recognized earlier both in HIR or RBg. The purpose is to provide prompt, simple and less cost access of justice for the citizen.

The concept of Small Claim Procedure is intended to provide prompt and economist solution in settling the dispute among the disputed parties. Commonly, the Small Claim Court also known as the real "People Court" [14]. This is in line with the purpose of the Small Claim Court, namely, to provide small and technical formalities as an appropriate consideration of the claim substance, simple examination of the claim, and less cost to exercise the formal litigation.

Due to the fact described earlier that the consumer dispute settlement, both in formal general litigation and out of court settlement, deemed not fulfill the access to justice for consumer, it is necessary to bring the bridging between both by applying the small claim procedure in consumer dispute settlement specifically. It is to answer the necessity of legal certainty as well as justice for the consumer in consumer dispute settlement practice. The most effective step is includes the consumer dispute as one of the object of dispute in to the Regulation of Small Claim Court or further in to the Draft of Procedure Law.

At the end, the consumer dispute in litigation will be settled in the manner of prompt, simple and less cost procedure. The amount of cost and time will be equal to the procedure required in civil claim procedure. The current problem in settling the consumer dispute through the alternative dispute resolution and formal litigation is solved by applying the small claim procedure. Thus, this procedure dedicated to disputed party that seeks for formal and simple litigation.

This introduction of a new concept of consumer dispute settlement in Indonesia is by applying the method of small claim procedures thereto, in order to create an effective, efficient resolution and provides legally certain and access to justice for any citizen.

IV. CONCLUSION

The practice of consumer dispute settlement through district court has been conducted in accordance with the prevailing laws, however, the legal purpose to obtain the legal certainty, justice with prompt, simple and less cost litigation is not achieved due to long term period required, graded procedure and high cost expensed in maintaining the consumer dispute through the District Court. Furthermore, the consumer dispute through out-of-court settlement in BPSK (Consumer Dispute Settlement Body) also facing the legal problem especially in competency issue and the execution of the BPSK decision/award. The bridging to solve such current problem in consumer dispute settlement is through a new concept of consumer dispute settlement in Indonesia, by applying the method of existing Small Claim Procedures thereto, in order to create an effective, efficient resolution and provides legally certain and access to justice for any citizen.

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