

## Obstacles Of Consumer Dispute Settlement Agency In Resolution Of E-Commerce Disputes Between Consumers With Business Players

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**Abstract:** *International recognition of consumers as the weak party is proven in UN General Assembly resolution No.A/RES/39/248 of 1985. Guidelines for Consumer Protection of 1985. According to the Guidelines for Consumer Protection of 1985, consumers must have certain basic rights, regardless of where they live, where they are or what country they come from. In the event that a consumer experiences a loss in an electronic transaction, the consumer has the option of complaining about the problem to BPSK or filing a lawsuit in district court, but the problem is whether the regulatory apparatus resolves consumer disputes through BPSK in electronic transactions (e-commerce), whether there are obstacles to the implementation of consumer dispute resolution. electronic transactions in implementing applicable regulations. The methods used in this research are legal research and descriptive analysis methods, with a normative juridical approach, namely research explaining the implementation of e-commerce dispute resolution. Consumer disputes through BPSK can only be resolved by agreeing on the form and amount of compensation as well as certain actions and a written statement explaining that the business actor will not repeat actions that harm consumers. It is hoped that there will be additional articles that specifically regulate dispute resolution efforts using non-litigation channels through BPSK because consumer dispute resolution regulations very narrowly regulate the process of resolving electronic transaction (e-commerce) disputes.*

**Keyword:** *Consumers, Disputes, E-commerce*

## INTRODUCTION

Everyone, anywhere, anytime, in their own or collective position, under any circumstances, must be a consumer of a particular product or service. Science, telecommunications, and information technology contribute to the growth of the transaction space of goods and/or services across a country's territory.<sup>1</sup> But most importantly, the practical problems that arise in global trade competition can have a bad impact on consumers.<sup>2</sup> Technological advances have made it easier to exchange information. Its existence is shown

<sup>1</sup> Susanti Adi Nugroho, 2008, Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya, Jakarta: Kencana Prenada Media Group, hlm. 1

<sup>2</sup> Iman Sjahputra, S. H. Perlindungan Konsumen Dalam Transaksi Elektronik: Ditinjau Dari Perspektif Hukum Perlindungan Konsumen Dan Hukum Siber. Penerbit Alumni, 2021. hlm.5



by the increasing prevalence of transaction activities that use the internet for distribution, marketing, sales, or sale of goods or services. As technology advances, more and more people are using electronic transaction platforms to buy and service.<sup>3</sup> Through the internet, consumers have the freedom to choose goods or/and services, both type and quantity, according to their desires.<sup>4</sup> Through international agreements such as GATT (*General Agreement on Trade and Tariffs*), WTO (*World Trade Organization*), AFTA (*Asean Free Trade Area*), and others, it has become a commitment of the Indonesian government that Indonesia is one of the actors in free trade.<sup>5</sup> Electronic transactions are a new way of buying and selling things using advances in information technology. Electronic commerce is a type of transaction that is different from conventional transaction models because it has a global and local reach.<sup>6</sup> Possible problems when working online.<sup>7</sup> Business actors have the ability to turn consumers into targets of their business activities through advertising, promotion, sales techniques, and the creation of standard contracts that can harm consumers. The inability of consumers to negotiate effectively with business actors is clearly contrary to the interests of consumers. In general, business actors have taken refuge in standard contracts or standard agreements that have been signed by both parties.<sup>8</sup>

According to Article 3 of the Consumer Protection Law Number 8 of 1999, the purpose of Consumer Protection is legal certainty and information disclosure as well as access to information. In practice, many business actors are incomplete in providing information about the products they trade so that the right to consumer information is not fulfilled. As a result, it becomes a problem between business actors and consumers in electronic transactions. The definition of *strict liability*, which is a burden addressed to business actors who act as producers, producers are responsible for products, goods or services. This principle can be used to ensnare business actors who promote goods and harm consumers. This principle is contained in the Consumer Protection Law.<sup>9</sup> From a regulatory perspective, there are legal differences between conventional and digital trade transactions, forms of agreements based on civil law, consumer protection law, information and electronic transactions (ITE) law, and other laws and regulations. Differences in regulations will have an impact on different perceptions such as differences in taking action if consumers and business actors suffer losses.<sup>10</sup> Problems that are often experienced by consumers from electronic transactions include: goods that are not in accordance with consumer orders, damage to goods,

<sup>3</sup> Maula, Robi, and Endang Prasetyawati. "Perlindungan Hukum Terhadap Konsumen Atas Hak Informasi Dalam Transaksi Elektronik." Seminar Nasional-Hukum dan Pancasila. Vol. 1. 2022. (diakses tgl. 10 Juli 2023) hlm. 19

<sup>4</sup> Ranto, Roberto. "Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Melalui Media Elektronik." Jurnal Ilmu Hukum: ALETHEA Volume 2 Nomor 2, Februari 2019: hlm.146

<sup>5</sup> Kristiyanti, Celina Tri Siwi. Hukum Perlindungan Konsumen. Sinar Grafika, 2022. hlm. 7

<sup>6</sup> Maula, Robi, and Endang Prasetyawati. "Perlindungan Hukum Terhadap Konsumen Atas Hak Informasi Dalam Transaksi Elektronik." Seminar Nasional-Hukum dan Pancasila. Vol. 1. 2022. (diakses tgl. 10 Juli 2023) hlm. 19

<sup>7</sup> Barkatullah, Abdul Halim. Hukum Transaksi Elektronik di Indonesia: sebagai pedoman dalam menghadapi era digital Bisnis e-commerce di Indonesia (Bandung, Nusamedia, 2019) hlm.31

<sup>8</sup> Gunawan Widjaya, Ahmad Yani, 2001, Hukum Tentang Perlindungan Konsumen, Jakarta: PT. Gramedia Pustaka Utama, hlm. 1

<sup>9</sup> Kadek Purwa Sastra Diyatmika, Ida Ayu Putu Widiati dan Ni Made Sukaryati Karma, Pertanggungjawaban dan Penyelesaian Sengketa Konsumen Berkaitan Dengan Perdagangan Parsel, Jurnal Analogi Hukum” Volume 2, Nomor 3, 2020 hlm. 396.

<sup>10</sup> Ichsan, Reza Nurul, et al. Penyelesaian Masalah Bisnis Dalam Transaksi Elektronik (E-Commerce). CV. Sentosa Deli Mandiri, 2020, hlm. 91

goods arriving late or even not received by consumers until consumers experience fraud. Consumers have the right to seek compensation from the manufacturer based on contractual obligations if a product is a product. UN General Assembly Resolution No.A/RES/39/248 of 1985, on Guidelines for Consumer Protection recognizes that internationally it shows the fact that consumers are seen as weak parties. As follows:

*“Taking into account the interest and need of consumers in all countries, particularly those in developing countries, recognizing the consumers often face imbalances in economics terms, educational levels, and bargaining power, and bearing in mind that consumers should have the right of access to not-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development”.*

*Guidelines for Consumer Protection of 1985* Consumers want to have certain basic rights, regardless of social class, wherever they are and from all countries.<sup>11</sup> There are many consumers who are not aware of information technology, especially when it comes to *e-commerce*, which is a multidisciplinary field that combines technical fields such as network and telecommunications, data management, data storage and retrieval, and business fields such as marketing, procurement and purchasing, billing, and distribution management.<sup>12</sup>

Most consumer rights violations are evident in daily activities. With the enactment of Law Number 8 of 1999 concerning Consumer Protection, consumers who have suffered losses now feel protected and have the option to file a lawsuit with a longer procedural process to the district court or report the problem to the Consumer Dispute Settlement Agency (BPSK).<sup>13</sup> Regarding dispute resolution in electronic transactions that are not covered by the Consumer Protection Law. E-commerce transactions are similar to traditional transactions because they give rise to the rights and obligations of consumers and business actors. These obligations and rights are not always easy to fulfill. Regarding the use of electronic transactions and electronic systems, the rules of the ITE Law are generic. The ITE Law does not provide any restrictions to business actors in interacting with consumers related to electronic transactions so that everything is guided by the Consumer Protection Law. One of the weaknesses of the ITE Law Rules is generic in terms of the implementation of electronic transactions. The scope of business dispute resolution regarding electronic transactions is very limited regulated by the UUPK, causing regulatory ambiguity so that the dispute resolution process becomes ambiguous. Through BPSK, the settlement of consumer disputes only comes down to a decision on the nature and scope of compensation and/or on certain actions to guarantee that consumer losses will not be recoverable. The guarantee in question is a written guarantee that the wrong act will not be repeated in the future.

Based on the above background, the issues that can be raised are as follows: first, whether the regulatory device for resolving consumer disputes through non-litigation channels (BPSK) on electronic transactions (*e-commerce*) is in accordance with the objectives of the Consumer Protection Law and the Information

<sup>11</sup> Susanti Adi Nugroho, 2008, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya*, Jakarta: Kencana Prenada Media Group, hlm.2-3

<sup>12</sup> Rongiyati, Sulasi. "Pelindungan konsumen dalam transaksi dagang melalui sistem elektronik." *Negara Hukum* 10.1 (2019): 22. Hlm. 11

<sup>13</sup> Pasal 45 Ayat (1) dan (2) Setiap konsumen yang dirugikan dapat menggugat pelaku usaha melalui lembaga yang bertugas menyelesaikan sengketa antara konsumen dengan pelaku usaha, atau melalui pengadilan yang berada dilingkungan peradilan umum. Pilihan tersebut berdasarkan pilihan sukarela para pihak yang bersengketa.

and Electronic Transactions Law; second, what are the obstacles in the practice of implementing *e-commerce* dispute resolution between consumers and business actors through *non-litigation* channels (BPSK) in implementing applicable regulations

## METHOD

This research is a legal research with a descriptive analysis method, with a normative juridical approach, namely research that describes and describes consumer protection in Indonesia, linked to legal theories in the practice of implementing e-commerce dispute resolution between consumers and business actors through non-litigation (BPSK).

The stages of research carried out are 1) Library research by searching, collecting research and studying books, literature, documents, laws and regulations and articles that are relevant and support this research. The materials mentioned above are divided into: primary legal materials, secondary legal materials and tertiary legal materials. 2) Field research. This study is intended to obtain primary data as a support for secondary data, namely by collecting and selecting data by interviewing competent parties, respondents who can support the implementation of this research. Data collection techniques through: Document Study, conducted on secondary data to obtain a theoretical basis for the opinion of experts both in the form of formal provisions and data through official texts; interview, this technique is used to collect primary data or field data from competent parties and relevant to the research problem.

## RESULTS AND DISCUSSION

### 1. Arrangements Regarding Resolving Consumer Disputes Through Non-Litigation Channels (BPSK) On Electronic Transactions

#### a. Overview of Electronic Transactions

The Great Dictionary of Indonesian (KBBI) defines a transaction as a sale and purchase agreement (in trade) between two parties, and defines online trading as the use of the internet network to make efforts to sell goods to be traded to sell goods and/or services, electronic transactions are the activities of buying and selling goods and/or services in the field of trade carried out between two parties using internet network facilities.<sup>14</sup> What is meant by electronic transactions based on Article 1 paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions states that electronic transactions are legal acts carried out using computers, computer networks, and/or other electronic media.<sup>15</sup> A legal relationship is established between the parties in an electronic transaction that begins with an electronic contract agreement. The parties have the freedom to enter into contracts in any way they choose, including electronically, as stipulated in the third book of the

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<sup>14</sup> Maula, Robi, and Endang Prasetyawati. "Perlindungan Hukum Terhadap Konsumen Atas Hak Informasi Dalam Transaksi Elektronik." Seminar Nasional-Hukum dan Pancasila. Vol. 1. 2022. (diakses tgl. 10 Juli 2023) hlm. 24

<sup>15</sup> Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

Civil Code, which is the legal basis for open contracts, so that the parties are free to enter into agreements, including electronic contracts.<sup>16</sup>

Article 19 of the ITE Law stipulates that the parties who conduct electronic transactions must use the agreed electronic system. Then Article 20 paragraph (2) of the ITE Law stipulates that "Approval of electronic transaction offers must be made with an electronic statement of acceptance"<sup>17</sup> Based on the provisions of Article 9 of Law Number 11 of 2008 concerning Information and Electronic Transactions, providing true, clear, and honest information is an obligation of business actors that must be provided to consumers.<sup>18</sup>

There are many websites, social media, and e-commerce for electronic transactions, including Instagram, Facebook, Telegram, WhatsApp, Shopee, Bukalapak, Tokopedia, as well as several food delivery service applications such as Gojek, Grab, ShopeeFood, and others that can be used in electronic transactions.

## **b. Overview of Online Buying and Selling in E-Commerce**

E-commerce, or a trading system that utilizes internet facilities (interconnection networks), has changed the way of doing business in Indonesia. Thanks to the advancement of information technology, E-commerce was born from the need for fast, simple, and useful services.<sup>19</sup> The growth of information technology has the greatest impact on the type of trade transactions known as *e-commerce*.<sup>20</sup> Meanwhile, the definition of electronic commerce, or e-commerce, refers to economic activities that use computer networks, in this case the internet, and includes all aspects of customers, producers, service providers, and traders as intermediaries.<sup>21</sup> Trade using electronic systems (E-Commerce) is defined as trade whose transactions are carried out through various electronic devices and procedures, according to Trade Law Number 7 of 2014 Article 1 number 24. Article 65 The Trade Law is carried out using an electronic system.<sup>22</sup> :

1. Every Business Actor who trades Goods and/or Services using an electronic system is required to provide complete and correct data and/or information.
2. Every Business Actor is prohibited from trading Goods and/or Services using an electronic system that is not in accordance with the data and/or information as referred to in paragraph (1).
3. The use of electronic systems as referred to in paragraph (1) must comply with the provisions stipulated in the Electronic Information and Transaction Law.
4. Data and/or information as referred to in paragraph (1) at least contains:

<sup>16</sup> Parmitasari, Indah. "Implementasi Kontrak Elektronik Dalam Transaksi Elektronik." Prosiding Seminar Nasional Hasil Penelitian dan Pengabdian Masyarakat, 13 Oktober 2021, hlm.264

<sup>17</sup> Sari, Emma Nurlaela. "Telaah Terhadap Pemenuhan Syarat Subjektif Sahnya Suatu Perjanjian Di Dalam Transaksi Elektronik Yang Dilakukan Anak Di Bawah Umur." Jurnal Poros Hukum Padjadjaran 1.1 (2019) hlm. 130

<sup>18</sup> Pasal 9 Undang-Undang No. 19 tahun 2016 tentang Perubahan atas Undang-Undang No. 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik

<sup>19</sup> MA Hamsah, "The Effectiveness of Law Number 8 of 1999 concerning Consumer Protection Against Selling Buy with Electronic Transaction System (E-Commerce) 2019, Al-Ishlah: Legal Scientific Journal, 22(2), p.84

<sup>20</sup> Ibid, hlm. 85

<sup>21</sup> Satya Dharma: "Penyelesaian Kasus Hukum Pada Transaksi Elektronik Atau E-Commerce Bagi Konsumen di Era Digital di Indonesia Jurnal Ilmu Hukum Vol. 5 No.2 Tahun 2022 hlm. 173

<sup>22</sup> Undang-Undang Nomor 7 Tahun 2014 tentang Perdagangan



- a) Identity and legality of the Business Actor as a producer or Distribution Business Actor
- b) Technical requirements of the Goods offered
- c) Technical requirements or qualifications of the Services offered
- d) Prices and methods of payment for Goods and/or Services
- e) Method of delivery of goods.
- 5) In the event of a dispute related to a trade transaction through an electronic system, the person or business entities that experience disputes can resolve the dispute through court or through other dispute resolution mechanisms.
- 5. Every Business Actor who trades Goods and/or Services using Electronic systems that do not provide complete and correct data and/or information as referred to in paragraph (1) are subject to administrative sanctions in the form of revocation of permits.

Sales through the internet that are carried out electronically through the media are contracts or legal agreements made with communication systems. An agreement is reached when there is an offer and acceptance from each party. Sites or websites are used by business actors to offer products, offers are made openly by business actors so that opportunities for consumers to get the goods they want.<sup>23</sup> When a purchase and sale agreement is reached through *e-commerce*, that is when the legal relationship between business actors and consumers arises which results in rights and obligations. When buying or selling something online, an offer is made when a business actor places an advertisement for the product in a store or *online marketplace*, and the order is received when the consumer presses the "*click*" or "*order*" sign. Approval of electronic transaction offers must be made with an electronic statement of acceptance, as stated in Article 20 Paragraph (2) of Law Number 11 of 2008.<sup>24</sup>

## 2. Consumer Dispute Resolution Through Non-Litigation Channels in Electronic Transactions

### a. Overview of Consumer Disputes

#### 1) Definition of Dispute

Consumer disputes are disputes between business actors and consumers where consumers demand compensation for losses caused by the use of products and/or services of business actors.<sup>25</sup> The dispute process can occur between the parties if there is a difference in perception, so there is a potential for disputes to arise.<sup>26</sup> A commercial *dispute according to Maxwell J. Fulton* is "*..... a commercial dispute is one which arises during the course of the exchange or transaction process is sentral to market economy*". Disputes arise for various reasons and problems behind them, especially due to conflicts *of interest* between

<sup>23</sup> Setyawati, Desy Ary, Dahlan Ali, and M. Nur Rasyid. "Perlindungan Bagi Hak Konsumen dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik." *Syiah Kuala Law Journal* Volume 1 Nomor 3, 2017 hlm. 42

<sup>24</sup> Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik

<sup>25</sup> Consumer Dispute Resolution Pattern in Electronic Transactions, Faculty of Law, Universitas Airlangga, Center for Business Studies, July 7, 2021. <https://fh.unair.ac.id/hukum-bisnis/pola-penyelesaian-sengketa-konsumen-electronic-transactions/>

<sup>26</sup> Hesti Dwi Atuti, Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)" *Jurnal Mimbar Justisia*, Vol. I No. 02 (2015) hlm. 175.

the parties. Disputes that arise between parties involved in various kinds of business or trade activities are called business disputes.<sup>27</sup>

This violation of consumer rights is what causes the dispute. Consumer disputes are defined as consumer lawsuits against business actors where consumers suffer losses for damage, pollution or use of products offered by business actors.<sup>28</sup> Consumer disputes arise because consumers are dissatisfied with a product or when they suffer losses due to using the goods and/or services. Thus, consumer disputes are caused by losses caused by personal *injuries*, physical disabilities (*injury to the product it self*) and economic losses (*pure economic loss*)<sup>29</sup> Chapter X of the Consumer Protection Law which consists of 4 (four) articles starting from Article 45 and ending with Article 48 regulating consumer dispute resolution. Meanwhile, Chapter VIII of the ITE Law Articles 38 and 39 regulate dispute resolution. Consumers are entitled to compensation if they suffer losses, in accordance with the provisions of Article 4 letter h of the UUPK. The consumer is entitled to compensation and/or reimbursement if the goods and/or services received are not in accordance with his expectations or the terms of the contract.<sup>30</sup> Defaults that occur in contracts regulated in civil law rules are the same as defaults that arise in buying and selling through *e-commerce*. The following are the elements of default committed by the parties in an e-commerce transaction: (1) Not doing what they are promised to do, (2) Carrying out what they promise, but not as promised, (3) Carrying out what is promised but late.<sup>31</sup>

The possibility of infringement by one or both parties in *e-commerce*. The violation of the law can be categorized as an unlawful act (*Onrechtmatigedaad*) which according to Article 1365 of the Civil Code, "Every unlawful act, which harms another person, demands that the person who by his fault causes the loss, compensate for the loss." as stipulated in Article 1365 of the Civil Code.

Based on the definition mentioned above, an act violates the law if it meets the following criteria:

- 1) there is an unlawful act
- 2) There is a mistake
- 3) there are disadvantages, and
- 4) There is a reciprocal relationship between elements 1, 2 and 3.

An unlawful act may occur in an *e-commerce* transaction If the above elements are not fully fulfilled, then an act cannot be said to be an unlawful act as regulated in Article 1365 of the Civil Code. In accordance with Article 19 of Law Number 8 of 1999 concerning Consumer Protection, business actors are obliged to

<sup>27</sup> Arus Akbar Silondae & Wirawan B. Ilyas, 2011, Pokok-Pokok Hukum Bisnis: Jakarta, Salemba Empat, hlm. 179

<sup>28</sup> Ahmad Wahidi, Musataklima, Nur Jannani, "Kewenangan Badan Penyelesaian Sengketa Konsumen (BPSK) Dan Pengadilan Tuntutan Pengguna Malaysia (Ttpm) Dalam Penyelesaian Sengketa Konsumen" Jurnal Penelitian Hukum De Jure Jurnal Penelitian Hukum De Jure (Vol. 23 No. 1, Maret 2023) hlm. 87.

<sup>29</sup> Panjaitan, Hulman. "Hukum Perlindungan Konsumen." (2021). Jakarta, Jala Permata Aksara. hlm. 98.

<sup>30</sup> Ranto, Roberto. "Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual Beli Melalui Media Elektronik." Jurnal Ilmu Hukum: ALETHEA Volume 2 Nomor 2, Februari 2019, hlm. 151

<sup>31</sup> Perdana, Afrilian, and Mahfud Dahlan. "Penyelesaian Wanprestasi Dalam Perjanjian Jual Beli Melalui Media Elektronik." Jurnal Ilmu Hukum 2.1 (2014) hlm.54

provide compensation for: a. damage; b. pollution; c. damage and consumer losses; d. consumer losses.<sup>32</sup>  
The form of compensation is one of the following:

- a. Refunds; b. Replacement of comparable or equivalent goods and/or services; c. Provision of health services and/or compensation in accordance with the provisions of relevant laws and regulations.<sup>33</sup>

Law Number 11 of 2008 Chapter VIII concerning Dispute Resolution<sup>34</sup> :

1) Article 38 states that:

- a) Every Person who suffers losses can file a lawsuit against the party that implements the Electronic System and/or uses Information Technology.

In accordance with the provisions of the Laws and Regulations, the public can collectively sue against parties who use Electronic Systems and/or Information Technology that are detrimental to the community.

According to laws and regulations, the public can file a lawsuit in *class action* (representative) against parties who use information technology or operate electronic systems that cause losses to the community.

2) Article 39 states that:

- a) Civil lawsuits are carried out in accordance with the provisions of Laws and Regulations. In addition to the settlement of civil lawsuits as referred to in paragraph (1), the parties may resolve disputes through arbitration, or other alternative dispute resolution institutions.

In accordance with Article 45 paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection, "Consumer Dispute Resolution can be pursued through the court or out of court based on the voluntary choice of the parties to the dispute."<sup>35</sup>

## Characteristics of Consumer Disputes

Consumer disputes have special characteristics. These special characteristics can be seen from the position of the consumer and the right method to solve it. Al. Wisnubroto details the characteristics of consumer disputes into 3 (three) consumer demands as follows:

1. The lack of balance between business actors and consumers, where business actors are more "dominant", causes consumer disputes.
2. Consumers are more "needy" to adhere to the principle of "take it or leave it"
3. In general, consumer disputes are not suitable for resolving through "formal, convoluted and expensive" litigation.

<sup>32</sup> Setiani, Herlin, and Muhammad Taufiq. "Perlindungan Konsumen Atas Barang Yang Tidak Sesuai Dengan Perjanjian Dalam Perdagangan Elektronik Dikaitkan Dengan Undang-undang Informasi dan Transaksi Elektronik." *Jurnal Ilmiah Living Law* 10.2 (2018) hlm. 122

<sup>33</sup> Ibid, hlm. 123

<sup>34</sup> Ibid

<sup>35</sup> Yasa, I. Gede Ferry, Eduardus Bayo Sili, and I. Gusti Agung Wisudawan. "Tinjauan Yuridis Penggunaan Klausula Baku Pada Perjanjian Dalam Rangka Perlindungan Konsumen." *Commerce Law* 3.1 (2023) hlm. 60



- a) Consumer disputes are one of the business disputes that are dominated by *interest* and not *right* or power.<sup>36</sup>

### 3) Basic Principles of Consumer Dispute Resolution

The right of consumers to get advocacy and protection in terms of appropriate settlement of consumer disputes.<sup>37</sup> According to Law Number 8 of 1999 concerning Consumer Protection, the Consumer Dispute Resolution Mechanism is limited to Article 23, Articles 45 to 48, and Articles 49 to 58.

Article 23 of the UUPK states:

"Business actors who refuse and/or do not respond and/or meet compensation for consumer demands as referred to in Article 19 paragraphs (1) to (4), can be sued through the consumer dispute resolution agency or submit to the judicial body at the place where the consumer is located."<sup>38</sup>

The two most basic legal remedies to resolve disputes due to electronic buying and selling transactions are preventive and repressive legal remedies. In the event of a dispute or default, other efforts that can be made include:

1. Dispute resolution can be pursued if the receipt has been sent by the buyer, then the law that can be taken is where the buyer sends the order.
2. Dispute resolution can be taken if the seller has received the order and payment from the buyer and the seller guarantees to deliver the goods, then the applicable law is where the seller accepts the order and payment.
3. Dispute resolution can be pursued with the most points of contact between business actors and consumers.
4. Dispute resolution can be pursued where one of the parties makes achievements.

Article 45 paragraph (2) states that the settlement of consumer disputes as referred to in this paragraph does not rule out the possibility of peaceful settlement by the parties to the dispute. At each stage, efforts are made to use peaceful settlement by both parties to the dispute.

What is meant by "peace" is a settlement reached by the disputing parties (business actors and consumers) without going through the court or the consumer dispute resolution process and not contrary to the law. One of the drawbacks of using the Consumer Protection Law to protect buyers (consumers) in e-commerce transactions, according to Edmon Makarim, a Telematics Law Expert, is that it can only be used for business actors operating within the legal jurisdiction of the Republic of Indonesia. Therefore, even though it has not reached all *e-commerce*, Indonesian law still allows the prosecution of business actors who commit defaults if their address and position are in Indonesian territory. The choice of legal issue will depend on the agreement between the seller and the buyer if the business actor is outside the jurisdiction of Indonesian

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<sup>36</sup> Nur Intan Racmawati & Rukiyah Lubis, Win-Win Solution Sengketa Konsumen, Yogyakarta, Pustaka Yustisia, hlm. 41

<sup>37</sup> Pola Penyelesaian Sengketa Konsumen Pada Transaksi Elektronik, Fakultas Hukum Universitas Airlangga, PusatKajian Bisnis, 7 Juli 2021. <https://fh.unair.ac.id/hukum-bisnis/pola-penyelesaian-sengketa-konsumen-transaksi-elektronik/>

<sup>38</sup> Pasal 23 Undang-Undang Nomor 8 tahun 1999 Tentang Perlindungan Konsumen

law (by incorporating one into the terms of the *e-commerce agreement*).<sup>39</sup> Choosing the right law to be used as the basis for resolving disputes that occur and the selection of courts to test them, can cause problems when there is disagreement between the parties in an *e-commerce transaction*. This problem can be avoided if the parties agree in advance which court they will use to resolve disputes that will arise in relation to the implementation and interpretation of the contract between them.<sup>40</sup>

The dispute resolution procedure can be used whenever there is a difference of opinion between the parties, in terms of the process divided into:

1. Litigation, or a formal legal process (law approach) used to resolve disputes in court (*court settlement*).
  - a) Non-litigation (out of court settlement) is a way of resolving disputes outside of court and does not follow formal legal procedures.<sup>41</sup>

## **b. Obstacles in Resolving Consumer Disputes through Settlement Bodies Consumer Disputes (BPSK)**

The Consumer Dispute Resolution Agency (BPSK), is a body formed by the government as an effort to resolve consumer disputes outside the court. It is hoped that the presence of BPSK can resolve consumer disputes quickly, easily and affordably.<sup>42</sup> Fast because the UUPK decided that BPSK must make a decision within 21 working days.<sup>43</sup> The administrative process and decision-making process are quite simple and straightforward. Cheap, affordable case costs. Of course, this is very helpful in resolving disputes arising from electronic transactions (e-commerce) between companies and consumers. Therefore, if a dispute arises in running a business through electronic transactions, it is more appropriate to resolve it outside the court, namely through BPSK. The possibility of peaceful settlement can be pursued by the parties to the dispute, namely business actors and consumers, without going through the court or the Consumer Dispute Resolution Agency as referred to in Article 45 paragraph (2) of Law No. UUPK, as long as it does not violate the UUPK. The UUPK mandates that a peaceful settlement must be sought first by the parties to the dispute, as can be seen from the explanation of Article 45 paragraph (2) of the UUPK.

The consumer protection law only introduces 3 (three) types, namely: conciliation, mediation, and arbitration, the method of dispute resolution charged is the task of the Consumer Dispute Resolution Agency.<sup>44</sup>

### **1. Consortium**

<sup>39</sup> Ichsan, Reza Nurul, et al. *Penyelesaian Masalah Bisnis Dalam Transaksi Elektronik (E-Commerce)*. CV. Sentosa Deli Mandiri, 2020, hlm. 92

<sup>40</sup> Ibid hlm. 92

<sup>41</sup> Arus Akbar Silondae & Wirawan B. Ilyas, 2011, *Pokok-Pokok Hukum Bisnis*: Jakarta, Salemba Empat, hlm. 180

<sup>42</sup> Susanti Adi Nugroho, 2008, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala Implementasinya*, Jakarta: Kencana Prenada Media Group, hlm.99

<sup>43</sup> Undang-Undang Perlindungan Konsumen, Pasal 5 UU No. 8 Tahun 1999

<sup>44</sup> Ahmadi Miru, Sutarnan Yodo, *Hukum Perlindungan Konsumen*, PT. RajaGrafindo Persada, Jakarta, 2010.

BPSK acts as a conciliator in the settlement of consumer lawsuits, summoning parties to business disputes and presenting witnesses and expert witnesses. The agreement between the two parties is made in the form of a written agreement submitted to the BPSK assembly to be subsequently stated in a decision to strengthen the agreement and signed by the disputing parties.

2. Mediation

The mediator acts as a mediator, assists and assists the parties to resolve disputes submitted to BPSK who act as mediators. The mediator does not have the right to decide the case, the parties themselves have the right to make a decision. The results of the agreement between consumers and business actors which are then outlined in the form of a written document signed by the parties to the dispute are then submitted to the BPSK assembly to be confirmed in the decision of the BPSK assembly to strengthen the agreement.

3. Arbitrase

Settlement of consumer disputes through arbitration, the parties elect arbitrators from BPSK members, who come from consumer elements and business actors, the elected members then choose the chairman from government elements. Arbitration is used to resolve consumer disputes. Through arbitration, the parties choose arbitrators from BPSK members consisting of business actors and consumer elements. Elected members then choose a chairman from among the elements of the government. Evidence of products and services, letters and documents from the parties, testimony of witnesses and expert witnesses, and other evidence that can be submitted to the panel during the dispute resolution process.

Business actors have the burden of proof and defense, but consumers must also provide evidence to strengthen their lawsuits. The flow of the trial through BPSK, whether conventional or electronic, basically follows the same procedure. Registration is done either by the last consumer or the heir for the title of the case. Whether the reporting and complaints should be heard, the case examination process does not reduce the period of 21 working days. In the Consumer Protection Law, it does not stipulate the provision for settlement of more than 21 days, then when the case has been held, dispute resolution will be carried out through mediation, conciliation, or arbitration. BPSK is still having difficulty implementing the UUPK, the consumer protection law is intended as a tool for consumers to seek justice but the legal provisions are not in accordance with expectations, namely for fast, easy, and cheap consumer dispute resolution.

In addition, there is no consistency in the articles in the UUPK, there is a contradiction between the articles and other articles.

1. Institutional Constraints

The institutional challenges of BPSK are still a serious problem. Only a few cities have BPSK. It is undeniable that there are more than 200 million consumers spread across all cities and districts in Indonesia, there seems to be no seriousness in both the central and local governments responding to consumer protection issues. The dispute resolution process by BPSK can be carried out in three ways, namely mediation, conciliation, and arbitration, three ways that are included in non-litigation. BPSK is not a body that fully carries out its judicial role. There is no judicial function carried out by BPSK.

2. Funding Constraints

BPSK's performance is affected by funding. Starting from the 2003 fiscal year, in accordance with the principle of regional autonomy, the APBD is responsible for bearing all costs related to the implementation of BPSK. The cost of implementing BPSK is donated to the State Budget and

- Regional Budget, in line with the spirit of regional autonomy, so starting from the 2003 fiscal year all BPSK implementation costs are charged to the APBD.
3. BPSK Human Resources Constraints  
The three components of BPSK membership are: the government, consumers, and business actors. The appointment of BPSK members is problematic because it prioritizes the representation of elements rather than the ability of members to resolve disputes.
4. Regulatory Constraints  
In carrying out its duties as a member of BPSK, the decision of BPSK in examining cases, received objections from judicial institutions, besides that the UUPK does not provide guidelines or instructions on technical procedures for proceedings at BPSK.
5. Lack of Public Response to the UUPK and BPSK Institutions  
Support from the community, especially consumers, is needed so that BPSK continues to exist. The following are the causes of the lack of public response to BPSK: the public loses respect for BPSK due to the lack of socialization between the UUPK and BPSK, BPSK was formed by the government but the government does not prepare adequate facilities and infrastructure such as buildings that are invisible to the public, and BPSK's unprofessional way of responding to consumer complaints and resolving cases addressed to it.

## CONCLUSIONS

Law Number 8 of 1999 concerning Consumer Protection regulates the resolution of consumer disputes. Consumer disputes are resolved in 2 (two) different ways in terms of procedure, namely: a) Litigation, which is a dispute resolution mechanism using formal legal rules (law approach); b) Non-litigation, i.e. the process of resolving disputes outside the court using conciliation, mediation, or arbitration through the Consumer Dispute Settlement Agency (BPSK). Law Number 11 of 2008 concerning ITE Chapter VIII regulated in Articles 38 and 39 regulates dispute resolution in e-commerce transactions as well as in Law Number 7 of 2014 concerning Trade. BPSK in implementing the UUPK still experiences obstacles, this is because the legal provisions are not in accordance with expectations, namely for fast, simple and cheap consumer dispute resolution. In addition, there is no consistency in the articles in the UUPK, there is a contradiction between the articles and other articles. The settlement of consumer disputes through BPSK is intended solely to agree on the form and amount of compensation or what actions must be taken by business actors, a statement is made in writing explaining that business actors will not repeat actions that can harm consumers. There are only 2 (two) paragraphs in the Consumer Protection Law Regulation that regulate Consumer Dispute Resolution, a very narrow rule in terms of regulating the dispute resolution process arising from electronic transactions (e-commerce). It is hoped that there will be additional special paragraphs or paragraphs related to the resolution of consumer disputes arising from electronic transactions (e-commerce). Consumers can try to resolve disputes by using a non-litigation process through BPSK, and if non-litigation is unsuccessful, consumers can file a lawsuit by taking the litigation route through the court process.

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