



Juridic Review on Consumer Protection Based on Law Number 8 of 1999 Concerning Consumer Protection

Rahmat Suhargon, Faulia Anggeraini

STIE Muhammadiyah Asahan, Indonesia

Received: 19 Jul 2021; Received in revised form: 25 Aug 2021; Accepted: 02 Sep 2021; Available online: 10 Sep 2021
©2021 The Author(s). Published by Infogain Publication. This is an open access article under the CC BY license
(<https://creativecommons.org/licenses/by/4.0/>).

Abstract —Consumer protection is a matter that becomes a polemic in improving the quality of companies or businesses carried out by business actors or producers. In terms of consumer protection, apart from improving and advancing the people's economy, it is also a manifestation of promoting good law enforcement. Currently, there are still many producers who do not pay attention to even the lack of concern for the rights of consumers or customers. Whereas the progress of a business entity established by business actors or producers cannot be separated from the interests of consumers or customers in it. An important key word to ensure that a consumer protection legal event has occurred is whether or not "consumers" are involved in it. If there is no consumer in a legal relationship, it can be ascertained that the legal area is not the field of consumer protection law. **Problem Formulation** What are the causes of violations of consumer protection in Indonesia, How is the process of resolving consumer disputes based on Law No. 8 of 1999 concerning Consumer Protection. The research method is in order to explain all the activities carried out in order to explain and or to answer the main problem. The specification of the research is normative legal research. Normative legal research, namely legal research using secondary data sources. There are several factors that cause consumer disputes, namely: Ignorance of consumers and business actors on their rights and obligations, low socialization of Law number 8 of 1999 concerning consumer protection from the government to the community. The process of resolving consumer disputes in Indonesia is based on law number 8 of 1999 concerning consumer protection in two ways, namely: by non-litigation (outside the court) and by litigation.

Keywords—Juridical Review, Consumer Dispute.

I. INTRODUCTION

In the current era of globalization Indonesia is faced with various problems, especially in the socio-economic field. The rapid development of economy make the national market more open of course it must continue to guarantee the improvement of people's welfare and certainty over the quality, quantity, and security of goods and services obtained by consumers in the market.

Consumer protection is a matter that becomes a polemic in improving the quality of companies or businesses producers. Who do not pay attention to even a lack of concern for the rights of consumers. Even though

the progress of a business entity established by business actors or producers cannot be separated from the interests in. Key words that are important to ensure that a consumer protection legal event has been involved in it. If there is no consumer in a legal relationship it can be ascertained that the legal area is not the field of consumer protection law.

Consumer protection is a term used to describe the legal protection to consumers in an effort to meet their needs from things that can harm themselves. In essence, there are two important legal instruments form the basis of consumer protection policies in Indonesia, namely the first 1945 Constitution as the source of law in Indonesia which mandates that national development aims to create

prosperous society. National development goals aim to be realized through a democratic economic development system able to grow and develop a world that produces goods and services suitable for consumption by the community.

Law Number 8 of 1999 concerning Consumer Protection. The enactment of this Law provides hope for the Indonesian people to obtain protection for losses suffered from transactions of goods and services where the Consumer Protection Act guarantees legal certainty for consumers.

Currently consumer disputes often occur between consumers and business actors. This is still many business actors who do not fulfill consumer rights because entrepreneurs or business actors are inclined how to get profits from their business not understand both as a consumer and as a business actor. Research objectives to find out about the causes of violations of consumer protection in Indonesia and to find out the process of resolving consumer disputes based on Law number 8 of 199 concerning consumer protection.

II. REVIEW OF LITERATURE

The Effect of Violations of Consumer Protection Law in the Rights and Obligations between Consumers and Businesses.

Consumer Protection Act is the most important legal subjects. In order to carry out their functions consumers economic actors who become user have important tasks. Article 5 of the Consumer Protection Act a number of consumer obligations are stated which indicates the consumer's duty to "intelligently" himself (being informed) continuously.

Article 5 letters a states that consumers are obliged to read or follow information instructions and procedures for the use or utilization of goods services for the sake of security and safety. The task of the consumer to read and follow these instructions is generally carried out after the transaction has taken place. If a consumer buys a drug for example, he is obliged to read the instructions for using the drug. In fact the task of accessing the widest possible information about the goods/services to be consumed should have been carried out by consumers from the pre-transaction stage. Consumers have a duty to criticize (be aware of) advertisements that offer goods/services around them.

In this case the main obligation of consumers regulated in Article 5 of the Consumer Protection Act where consumers are obliged to know their rights and obligations.

Other rights of consumers include:

- a. The right opinions and complaints heard on the goods services used. Not infrequently consumers get a loss in consuming an item/service. It means that there is a weakness in the goods/services produced by business actors. It is hoped that business actors will be tolerant in accepting every opinion and complaint from consumers. On the other hand business actors also benefit because with the various opinions and complaints business actors get input to improve their competitiveness.
- b. The right to get advocacy, protection, and efforts to resolve consumer protection disputes properly. Business actors certainly understand very well about their goods/services. While on the other hand consumers do not understand all what processes are carried out by business actors to provide the goods/services they consume, So that the position of consumers is weaker than business actors. Therefore appropriate advocacy, protection and dispute resolution efforts are needed for consumers. Appropriate means not taking sides with either party and in accordance with applicable legal provisions.
- c. The right to receive consumer guidance and education. In general the position of consumers is weaker than the position of business actors. For this reason business actors must provide good and correct guidance and education to consumers. The guidance and education is about how to consume that is beneficial to consumers instead of trying to exploit consumers.
- d. The right to be treated or served correctly and honestly and not discriminatory. It is a human right to be treated equally. Business actors must provide the same service to all their consumers regardless of differences in ideology, religion, ethnicity, wealth, or social status. Then what about the difference between business and economy class on airlines? Or there is priority customers at the bank? Is this a form of discrimination because of wealth? I don't think this is discrimination. The existence of a priority business class or customer is based on a contractual relationship. Previously there was an agreement between consumers and business actors. If you pay a little the facilities are like this, if you add money the facilities are added.
- e. The right to obtain compensation replacement, if the goods services received is not in accordance with the agreement. This is the essence of consumer protection law. How consumers who

are harmed by consuming goods/services obtain compensation or replacement. Actually the purpose of providing compensation replacement is to restore the consumer's condition to its original state as harmed the consumer did not occur.

- f. Rights regulated in other statutory provisions. Consumer rights are actually very numerous and could continue to grow. The existence of this provision opens opportunities for the government to guarantee the fulfillment of consumer rights which are not regulated in the above provisions. Business actor is any individual or business entity whether in the form of a legal entity or not a legal that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia either alone or jointly through agreements to carry out business activities in various economic fields.

The Low Socialization from the Government on Consumer of Law Protection

Law number 8 of 1999 concerning Consumer Protection was formed in 1999 by the government. Until now the lack of public information regarding law number 8 of 1999 concerning consumer protection and how to resolve consumer disputes through BPSK is due to the low level of socialization of the existence of BPSK duties and functions of BPSK to dispute resolution procedures at BPSK.

Legally resolving consumer disputes through BPSK is very beneficial to the community among others, at no cost, in a short time handled by experts in their fields and the main thing is that BPSK decisions are final and binding. BPSK is outside the general court the Consumer Protection act makes a breakthrough by facilitating consumers who feel aggrieved by filing a lawsuit to business actors outside the court. The mechanism of the lawsuit is carried out voluntarily from both parties to the dispute.

As previously stated by the Chairman of the National Consumer Protection Agency (BPKN), Rizal E Halim stated that the lack of socialization and education about consumer protection has led to the level of awareness and understanding of consumers and business actors in the regions towards Law 8/1999 on Consumer Protection (UUPK) namely to consume products that meet the aspects of security, health, safety and environment (K3L) is still low so that the efforts of communication media to build information networks and cooperation with parties related to consumer protection are needed.

The National Consumer Protection Agency (BPKN) is an agency established in accordance with the mandate of Law number 8 of 1999 which has the function of providing advice and considerations to the government in an effort to develop consumer protection in Indonesia. In line with this function BPKN has a number of tasks one of which is to promote partiality to consumers disseminate information on consumer protection and receive complaints. BPKN's policy direction will focus on three fundamental issues in the next three years. The lack of socialization of the Consumer Protection Law Number 8 of 1999 is one of the factors that cause frequent consumer disputes in Indonesia.

III. RESEARCH METHODOLOGY

The research method is in order to explain all activities carried out in order to explain and or to answer the main problem. The research specification is normative legal research. Normative legal research is legal research using secondary data sources. Secondary data in the field of law can be distinguished namely primary legal materials legal materials secondary law and tertiary legal materials. Primary legal materials are legal materials that are binding in the form of applicable laws and regulations and are related to the issues discussed. The primary legal materials in this writing are statutory regulations such as: the 1945 Constitution, Law number 8 of 1999 concerning Consumer Protection, etc.

IV. FINDING AND DISCUSSION

The Consumer Dispute Settlement Process based on Law Number 8 Years 1999

In resolving consumer disputes the government has created regulations contained in Law number 8 of 1999 concerning Consumer Protection. Consumer Protection is all efforts that ensure legal certainty to provide protection to consumers. Law for consumers in obtaining, using, using services for their daily needs. With the enactment of Law Number 8 of 1999 concerning Consumer Protection it is hoped that it will have a positive influence on business actors and consumers at the same time. Whereas consumer protection is actually not only beneficial for the interests of consumers but also the interests of business actors.

The mechanism for enforcing consumer protection laws requires the support of the judicial system. The Consumer Protection Act contributes several new criminal provisions, such as the act of producing goods with quality, quantity, and composition outside the

standard or that are not in accordance with the promised guarantee/information. Through physical and psychological coercion, are also some of the crimes regulated in the Consumer Protection Act. To process criminal charges like this the consumers can only file them through the conventional justice system not through the Consumer Dispute Settlement Agency (BPSK).

Article 23 of the UUPK states that if the manufacturer business actor and distributor business actor refuses and does not provide a response and not fulfill the compensation for the consumer's demands, the consumer is given the right to sue the business actor and resolve disputes that arise through the Dispute Resolution Agency. Consumers (BPSK) or by filing a lawsuit to the judiciary at the consumer's domicile.

This is in line with Article 45 of the Consumer Protection Law which states:

- a. Every consumer who is harmed can sue a business actor through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.
- b. Settlement of consumer disputes can be reached through the courts or out of court based on the voluntary choice of the disputing parties.
- c. Settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as regulated in the Law.
- d. If an out-of-court consumer dispute resolution effort has been chosen a lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties or by the disputing parties.

In an effort to resolve consumer disputes according to the UUPK there are two options namely:

- a. Through an institution tasked with resolving disputes between consumers and business actors (in this case BPSK).
- b. Through the judiciary in the general court environment. In the literature on dispute resolution the institution in charge of resolving disputes between consumers and business actors (in this case BPSK) is called the non-litigation route while through the courts within the general court or judiciary it is called the litigation route.

The Consumer Dispute Settlement Agency (BPSK) is one of the institutions that can be used as an alternative for seeking justice for consumers who feel that their legal rights have been harmed due to the use of goods and services. In Article 1 number 11 of Law Number 8 of 1999 concerning Consumer Protection BPSK is the agency in

charge of handling and resolving disputes between business actors and consumers. In particular the function of BPSK is as an alternative to consumer dispute resolution outside the court and this institution is formed in districts/cities.

In Article 3 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number: 350/MPP/Kep/12/2001 concerning the Implementation of the Duties and Authorities of BPSK the duties and authorities of BPSK includes:

- a. Carry out handling and settlement of consumer disputes by means of conciliation, mediation, and arbitration;
- b. Provide consumer protection consulting; 3. Supervise the inclusion of standard clauses;
- c. Report to public investigators if there is a violation of the provisions in Law Number 8 of 1999 concerning Consumer Protection;
- d. Receive complaints both written and unwritten from consumers regarding violations of consumer protection.
- e. Conduct research and examination of consumer protection disputes business actors suspected of having violated the consumer protection law.
- f. Summon and present witnesses expert witnesses and/or anyone who is deemed to know the violation of Law Number 8 of 1999 concerning Consumer Protection.
- g. Request assistance from investigators to present business actors, witnesses, expert witnesses or any person as referred to in letters g and h, who are not willing to comply with BPSK's summons;
- h. Obtain, examine and/or evaluate letters, documents, or other evidence for investigation and/or examination;
- i. Decide and determine whether or not there is a loss on the part of the consumer;
- j. Notify the decision to business actors who violate consumer protection;
- k. Imposing administrative sanctions on business actors who violate the provisions of Law Number 8 of 1999 concerning Consumer Protection.

Members of the Consumer Dispute Settlement Agency (PSK) consist of elements of the government, elements of consumers, and elements of business actors. The members of each element are at least 3 (three) people and a maximum of 5 (five) people. The appointment and dismissal of BPSK members is determined by the Minister. Further provisions regarding the establishment of BPSK are regulated in Presidential Decree of the Republic of Indonesia Number 90 of 2001.

As for the implementation of BPSK's duties and authorities it is regulated in the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001. For the first time the establishment of BPSK is regulated in the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 605/MPP/8/2002 dated August 29, 2002 concerning Appointment of BPSK Members to the government of Makassar city, Palembang city, Surabaya city, Bandung city, Semarang city, Yogyakarta city and the city of Medan.

In accordance with Article 19 paragraph (1) of the UUPK that business actors are responsible for providing compensation for damage, pollution and consumer losses due to consuming goods and services produced or traded. The compensation must be carried out within a grace period of 7 (seven) days. After the date of the transaction. This is in accordance with what is stipulated in Article 19 paragraph (2) that the provision of compensation is carried out within a grace period of 7 (seven) days after the date of the transaction. If within 7 (seven) days it turns out that the business actor provides compensation then there will be no consumer dispute. However on the other hand if within 7 (seven) days the business actor does not provide compensation a consumer dispute will occur. Consumers who are harmed will take legal action by suing business actors.

Settlement of disputes that occur between consumers and business actors can be resolved through litigation (through the courts) and non-litigation channels (not through courts). Chosen by the community in resolving the dispute in question. However, the court will still be the last resort if at the non-litigation level there is no agreement.

Based on the results of the study there are several main obstacles faced by BPSK in implementing the consumer protection law.

- a. Institutional Constraints.
- b. Funding Constraints.
- c. BPSK Human Resources Constraints.
- d. Regulatory Constraints.
- e. Obstacles in Guidance and Supervision, and Low Coordination between Responsible Apparatus.
- f. Constraints of Lack of Socialization of Consumer Protection Policies.
- g. Constraints of Lack of Public Response to the Consumer Protection Law and BPSK institutions.

Consumer dispute resolution through the Consumer Dispute Settlement Agency (BPSK) which is located in every district/city throughout Indonesia has 3 (three) mechanisms in consumer dispute resolution. That is: Conciliation, Mediation and Arbitration.

In practice, the consumers and business actors who are in dispute are given the right to choose in the dispute resolution mechanism. After the mechanism is chosen by the parties to resolve consumer disputes the Consumer Dispute Settlement Agency (BPSK) will carry out the settlement process.

Conciliation is a means for the disputing parties to discuss the settlement without the involvement of a third party as a mediator so there is no standard procedure but the procedures and mechanisms are left to the agreement of the disputing parties. Dispute resolution is fully controlled by the parties it is informal and various aspects are discussed not only legal issues.

Mediation with dispute resolution through negotiation dispute resolution through mediation also has several stages that must be passed. The mechanism of dispute resolution by arbitration is essentially not much different from the process of examining cases in court. Because both arbitration and litigation are adjudicative mechanisms that is third parties involved in resolving the dispute have the same authority to decide the dispute. Arbitration is a private adjudicative while litigation is a public adjudicative. So that both arbitration and litigation are winning-lose solutions.

In the arbitration process if the parties do not accept the decision issued by the district/city Consumer Dispute Settlement Body (BPSK) assembly they can make an appeal through the District Court (PN) in the district/city where the parties are located or adjusted to the regulations contained in the arbitration process.

V. CONCLUSION

1. There are several factors that cause consumer disputes namely: Ignorance of Consumers and Business Actors on their rights and obligations and the low socialization of Law number 8 of 1999 concerning consumer protection from the government to the community.
2. The process of resolving consumer disputes in Indonesia based on law number 8 of 1999 concerning consumer protection in two ways namely: By means of non-litigation (outside the Court) and By means of litigation

REFERENCES

- [1] Sidabalok, Janus, 2014, *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti : Bandung
- [2] Abdul rasyid ahmad sofian, Shidarta, 2019, *Aspek hukum ekonomi dan bisnis*, Pustaka Media Group, Jakarta,

- [3] Kurniawan, Aries, *Peranan Badan Penyelesaian Sengketa Konsumen Dalam Penyelesaian Sengketa Konsumen*, Kompas 6 Agustus 2008
- [4] Adi Nugroho, Susanti, *Mencari Ujung Tombak Penyelesaian Sengketa Konsumen*, Hukum Online, 9 Mei 2009
- [5] Margono, Sayud, *Penyelesaian Sengketa Bisnis*, Ghalia Indonesia, Jakarta, 2010
- [6] <https://bpkn.go.id/uploads/document/41b64ac58b0ad0d025f7911dc4d1839d6492214a.pdf> diakses tgl 30_07_2021
- [7] <https://bpkn.go.id/uploads/document/41b64ac58b0ad0d025f7911dc4d1839d6492214a.pdf> diakses tgl 30_07_2021
- [8] <https://bpkn.go.id/posts/show/id/1838diaksesharirabutgl> 04_08_2021
- [9] <https://media.neliti.com/media/publications/92841-ID-sengketa-konsumen-dan-teknis-penyelesaia.pdf> diakses sabtu tgl 07 Agustus 2021