



Authority of the consumer dispute resolution board (bpsk) in resolving consumer disputes in the financial services sector

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ABSTRACT

This research presents the fact that there is a legal urgency that must be immediately regulated in regulations related to the object of research, namely the resolution of financial services disputes through the Consumer Dispute Resolution Agency (BPSK). The research was carried out using the literature study method, namely a normative approach, namely conducting a study of primary legal materials in the form of statutory regulations -invitations, books or other literature relevant to the legal issues being discussed. The research results show that there is a conflict of norms and a conflict of authority regarding dispute resolution in the financial services sector, this can result in less than optimal implementation of consumer protection as mandated by Law NO 8 of 1999 concerning Consumer Protection.

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1. Introduction

Indonesia has various institutions tasked with protecting consumers. This Indonesian consumer protection institution has an important role in ensuring that consumer rights are protected and respected (mustapa khamal rokan, 2018). These institutions include general judicial institutions, namely the District Court (litigation) and judicial institutions outside the general court/District Court (Non litigation) which are also often called Alternative Dispute Resolution Institutions, for example the Consumer Dispute Resolution Agency (BPSK). The Consumer Dispute Settlement Agency (BPSK) based on article 49 of Law Number 8 of 1999 concerning Consumer Protection and Regulation of the Minister of Trade Number 06/M-DAG/PER/2/2017 concerning the Consumer Dispute Settlement Agency is a special consumer court institution (small claims court).

(Suryono, 2021) is regulated by general justice or non-litigation which is expected to be able to answer the demands of the community so that the process of litigating matters is fast, simple and cheap. The presence of a dispute resolution institution outside the court is in order

to overcome the twists and turns of the judicial process. However, the parties to the dispute can still resolve the dispute in court as stated in Article 45 paragraph (4) UUPK states "if an effort to resolve a consumer dispute outside of court has been chosen, a lawsuit through court can only be pursued if the effort is declared unsuccessful by one of the parties or by the parties to the dispute." This means that dispute resolution through court remains open after the parties fail to resolve their dispute outside court. (Chrisdanty, 2018).

One of the duties and authorities of the Consumer Settlement Agency (BPSK) is to resolve consumer disputes in the field of trade in goods and/or services. The definition of goods here is according to Article 1 paragraph (4) UUPK "Goods are every object, whether tangible or intangible, whether movable or immovable, consumable or non-expendable, which can be traded, used, employed or exploited by consumers." while the definition of services according to Article 1 paragraph (5) UUPK "Services are any services in the form of work or achievements that are provided to the public to be utilized by consumers. The authority of the Consumer Dispute Settlement Agency in resolving consumer disputes in the financial services sector has often had conflict in society recently.(Maria & Widayati, 2020) On the one hand, the public thinks that resolving consumer disputes in the financial services sector is the authority of the Consumer Dispute Resolution Agency (BPSK).

On the other hand, some people think that Resolving financial services consumer disputes is the authority of the Financial Services Authority (OJK). This is due to the issuance of Financial Services Authority Regulation Number 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector (POJK Consumer Protection) by establishing an institution, namely the Alternative Institution (Wira Pandi Putra Sinaga, Janus Sidabalok, 2024). Financial Services Sector Dispute Resolution (LAPS SJK) creates dualism and creates legal uncertainty regarding who has the authority to resolve consumer disputes in the financial services sector, which is very detrimental to consumers so there is a need for legal certainty regarding who has the legal right to resolve consumer disputes in the services sector finance (Roisah, 2015).BPSK and LAPS have the same function, namely as institutions that receive co

mplaints and questions from the public regarding disputes in the financial services sector (Shofie, 2013). Until now, since LAPS began operating, BPSK continues to handle disputes in the financial services sector, this is because there are provisions in the UUPK which stipulate that both entrepreneurs in the field of trading goods and/services are all referred to as business actors so that both business actors in the field of trading goods and business actors in the services sector including financial services, if there is a dispute with consumers, consumers can choose BPSK as a place for resolving disputes between consumers of financial services(Dewi, 2018).

Based on the background description above, a problem formulation can be made, namely: What is the basis for the authority to resolve Financial Services disputes by the Consumer Dispute Resolution Agency (BPSK)?

2. Method

This dissertation research uses normative research methods, namely studying legal materials in the form of statutory regulations relating to problems and a combination of various approaches, namely the legislative approach, case approach, conceptual approach (nurul qamar, 2017). Collection techniques and processing legal materials using primary legal material collection techniques in the form of legislation collected using the inventory method and categorization related to legal issues. techniques for collecting legal materials secondary in the form of literature study by reviewing, analyzing and analyzing literature literature. After the data and

legal materials have been collected, the next stage is: data processing by comparing one legal material with another others, both primary and secondary so that a general picture of the results is obtained study (Ali, 2009).

Next, legal material analysis techniques use analysis normative/perspective and the legal reasoning method used is discovery law. The importance of reconstructing BPSK authority arrangements based on justice values because: 1) philosophically BPSK is the embodiment of Law no. 8 years 1999 Concerning Consumer Protection to protect consumers in the form of consumer dispute resolution. 2) (Shofie, 2015). theoretically, that in a legal state There is a concept of the state that relies on the belief that state power must be carried out on the basis of fair and good laws. The rule of law requires that every action from the state must aim to uphold legal certainty, done equally, become an element that confirms democracy, and fulfills the demands of common sense.

In the effort to become a state of law there are good elements in including respecting human rights and human dignity, division and separation power, government is run based on the state constitution, there is a judiciary administration in disputes between the people and the state. This suggests no there is absolute freedom for the people, state administrators and institutions country in carrying out its life.

A country with good and true laws of course it will regulate how its people should act as citizens good and obedient to the law and regulates how the government should run duties and responsibilities (Mairul & Irianto, 2018). 3). Sociologically, it is hoped that it will be able to improve the consumer's trust in BPSK. 4). juridically, there is a conflict norma. The results of the second research show that the concept of authority regulation BPSK: a) Consumer dispute resolution through BPSK is carried out for fulfill a sense of justice. b). provide legal certainty for BPSK in implementing duties and authority to resolve consumer disputes starting at the receiving stage complaint/lawsuit, stage of examining the complaint/lawsuit, stage of making a decision until the decision implementation stage (Tampubolon, 2017).

3. Analysis and Results

Basically, buying and selling activities create a mutually necessary relationship between business actors and consumers. Where, business actors have an interest in making the maximum profit. Meanwhile, consumers are interested in getting satisfaction in the form of quality of certain products (Ishak & Bani, 2017). Therefore, with the interest of each party in obtaining their rights, coupled with the very rapid dynamics of technological progress in the transaction of goods and/or services, this must of course be accompanied by a legal basis that can provide a sense of security for consumers in carrying out transactions. Especially regarding the possibility of a dispute of interest between the two parties.(Onan Purba, 2019).

The Consumer Dispute Resolution Agency (BPSK) is an alternative body for resolving consumer disputes outside of court based on Article 49 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection, and its authority is regulated in Article 52 of Law Number 8 of 1999 Concerning Consumer Protection, one of which is receiving complaints from consumers regarding alleged violations of consumer protection committed by business actors. (Muliya, 2022).

The formation of BPSK as an alternative dispute resolution in the consumer sector, has advantages that are in line with Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, where BPSK is obliged to issue a decision no later than 21 (twenty one) working days after the lawsuit. received, and within no later than 7 (seven) working days from

receiving the decision the business actor is obliged to implement the decision (Larasati Anyufa, Aam Suryamah, 2016). This is related to the advantages of the APS itself, namely, efficiency, low costs and a fast process. Therefore, BPSK as an institution arbitration whose duties are within the scope of seeking solutions or peaceful resolution of consumer disputes with business actors so that it is hoped that dispute resolution will be simple and short, there is no longer a need for dispute resolution through court which tends to be long and complicated (Sutarih, 2019).

Some of BPSK's authorities in resolving consumer disputes are in the goods trade sector and the service provision sector. In this case the researcher emphasizes resolving consumer disputes in the service sector, especially the financial services industry sector. According to the Financial Services Authority (OJK), what is meant by the financial services industry is a collection of companies or institutions, including supporting institutions, which operate in the financial services sector.

The financial services industry has three major scopes, namely: The banking industry, banking is everything related to banks, starting from institutions to the process of implementing business activities. The banking industry is closely related to the working system of banks which are one of the financial institutions, the non-bank financial industry is an activity related to financial management, but the system and way it works are not like banks. Because usually this type of industry attracts funds indirectly (Firmansyah, 2016). Examples of the non-bank financial industry are insurance institutions (for example life insurance companies), pension fund management (for example BPJS Employment), microfinance institutions, and financing institutions (for example venture capital companies). Capital markets industry The capital markets industry is also included in the scope of the financial services industry.

BPSK as formulated by the UUPK has general authority regarding the resolution of consumer disputes relating to goods and/or services, as stated in Article 45 (1) UUPK "Every consumer who is harmed can sue business actors through institutions tasked with resolving disputes between consumers and perpetrators. business or through courts within the general judiciary." This means that BPSK only accepts complaints from consumers and business actors.(Ayuzein & Suwandono, 2021).

There is an understanding of consumers and business actors contained in the UUPK. According to Article 1 paragraph (2) UUPK, what is meant by consumers is every person who uses goods and/or services available in society, whether for the benefit of themselves, their families, other people or creatures. another life and not for trading. Meanwhile, what is meant by business actor according to article 1 paragraph (3) is every individual or business entity, whether in the form of a legal entity or non-legal entity, which is established and domiciled or carries out activities. Based on the description above, it can be stated that the scope of business actors is every individual, whether a legal entity carrying out trade, including Limited Liability Companies, Cooperatives, BUMD, or non-legal entities, including CV, UD, Firma.(Wira Pandi Putra Sinaga, Janus Sidabalok, 2024).

Based on the description above, it can be stated that all businesses in the financial services industry, whether managed by banking institutions or non-bank financial institutions, capital markets, cooperatives, finance that are available in the community, including capital markets, both with legal entities and non-legal entities, are carried out by entrepreneurs and/or service providers, all of them are referred to as Business Actors. So if we refer to the authority of BPSK, namely the body tasked with handling and resolving consumer disputes in the financial

services sector between business actors and consumers. BPSK has special duties and authority (article 52 UUPK), including; carry out handling and resolution of consumer disputes, by means of mediation, arbitration or conciliation; providing consumer protection consultation; supervising the inclusion of standard clauses; report to the general investigator if there is a violation of the provisions of the consumer protection law; It is. receive complaints, both written and unwritten, from consumers regarding violations of consumer protection; conducting research and examination of consumer protection disputes; summon business actors who are suspected of having committed violations of consumer protection; summon and present witnesses, expert witnesses, and/or anyone deemed to have knowledge of violations of the Consumer Protection Law; request assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letters g and h, who is not willing to comply with BPSK's summons; obtain, examine, and/or evaluate letters, documents, or other evidence for research and/or inspection; decide and determine whether or not there is any loss on the part of the consumer; notify decisions to business actors who violate consumer protection; impose administrative sanctions on business actors who violate the provisions of the Consumer Protection Law.

Furthermore, according to Article 14 of the Regulation of the Minister of Trade Number 17/MDAG/PER/4/2007 concerning the Duties and Authorities of the Consumer Dispute Settlement Body and Procedures for Resolving Consumer Disputes, it explains what information must be included in a lawsuit/complaint either verbally or in writing (Sidabalok, 2023). This information includes: (1) Plaintiff's identity accompanied by personal evidence; (2) Defendant's identity; (3) Object of the Lawsuit; (4) Proof of Acquisition of Goods and/or Services (such as receipts, invoices, receipts, or other evidence); (5) Place and date of obtaining the goods or services or event; (6) Material losses experienced by the Plaintiff.

Based on the description above, BPSK is an official body whose existence is determined by law to handle and resolve financial services consumer disputes (Amilatul et al., 2021). It is not clear what the difference is between "handling" and "resolving" here because the UUPK does not provide any explanation at all. It is reasonable to assume that these two words are related to the process and the output of the process. If Article 52 UUPK is used as a reference, it appears that there are 13 tasks and authorities of BPSK, not all of which are related to handling and resolving disputes. This means that the boundaries of BPSK's duties and authority, as can be drawn from the provisions of Article 1 point 11 of the UUPK, have been expanded by Article 52 of the UUPK.

In resolving consumer disputes in the financial services sector, BPSK is given the task and authority to impose administrative sanctions on financial services business actors who violate UUPK provisions. So, this sanction is only one way, namely only aimed at financial services business actors (Ansyah, 2024). BPSK is not given the authority to impose sanctions on consumers, even if, for example, the consumer is found to be wrong in their complaint/petition/lawsuit and for this reason the business actor has suffered material or immaterial losses.(Djanganritu, 2018).

According to Article 60 UUPK states that BPSK has the authority to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and paragraph (3) Article 20, Article 25, and Article 26. Administrative sanctions in the form of compensation are determined at a maximum of IDR 200,000,000, - (two hundred million rupiah). The procedures for determining administrative sanctions as intended in this article are further

regulated in statutory regulations. It can be said here that Ministry of Industry and Trade Number 350/2001 is [one of] the statutory regulations in question (Gabriel Pradipta & Budi Kharisma, 2019).

Currently, Financial Services Authority Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector. According to this regulation, consumer dispute resolution in this sector must be carried out at the Financial Services Institution (LJK) first. In the OJK Regulation concerning Consumer Protection in the Financial Services Sector, it is stipulated that every LJK is required to have a work unit and/or function as well as a service mechanism and resolve complaints for consumers. If the dispute resolution at the LJK does not reach an agreement, consumers can resolve the dispute outside of court or through court. Dispute resolution outside of court is carried out through the Alternative Dispute Resolution Institution (LAPS).

The existence of LAPS in OJK regulations cannot necessarily replace the existence of BPSK. First of all, it needs to be carefully examined that the meaning of consumer in UUPK and UUOJK is actually not the same. In the UUOJK, consumers are "Parties who place their funds and/or utilize the services available at Financial Services Institutions, including customers in banking, investors in the capital market, policy holders in insurance, and participants in pension funds, based on statutory regulations. in the financial services sector." So, investors are also consumers from the OJK perspective. It's worth asking, how can investors be positioned as consumers? It is clear that this denotation is different from the scope of the definition of consumer in the UUPK which assumes that consumers are the final users of goods/services. Next, BPSK in the legal hierarchy was born from a law, namely Law No. 8 of 1999 concerning Consumer Protection, while LAPS SJK was born from an OJK regulation. So from this position, LAPS SJK does not eliminate BPSK's authority in resolving consumer disputes in the financial services sector.

4. Conclusion

Based on the discussion above, it can be concluded that BPSK which was formed based on the UUPK has general jurisdiction to resolve consumer disputes related to goods and/or services. The definition of services according to Article 1 paragraph (5) UUPK "Services are any services in the form of work or achievements that are provided to the public to be utilized by consumers. The financial services industry has three major scopes, namely: banking industry, non-banking and capital markets according to the UUPK, those in the financial services industry are referred to as business actors. BPSK's duties and authority include resolving consumer disputes between business actors and consumers, including having the authority to resolve consumer disputes in the financial services sector.

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After the formation of POJK No. 07/61/2020.LAPS SJK does not affect the role of BPSK in resolving consumer disputes in the financial services sector. This is because BPSK was born from a law, namely Law No. 8 of 1999 concerning Consumer Protection, while LAPS SJK was born from a regulation. OJK so that according to the hierarchy of the BPSK Law, it still has the authority to resolve consumer disputes in the financial services sector. However, harmonization must still be built with other institutions or institutions related to consumer dispute resolution. The authority of the Consumer Dispute Resolution Body (BPSK) in resolving consumer disputes in the financial services sector requires an in-depth juridical analysis of the laws and regulations

governing this authority. Real case studies can provide an overview of how this authority is applied in practice. To measure the effectiveness of dispute resolution by BPSK, data collection through surveys or interviews with consumers who have used BPSK services is very important. Quantitative data analysis on the number of cases resolved, time to resolution, and level of consumer satisfaction is also needed to provide a more complete picture. The study should also identify challenges and obstacles faced by BPSK, such as limited resources and procedural issues. Comparative studies with similar institutions in other countries can help find best practices that can be adopted. In addition, developing the capacity and competence of BPSK members through training programs and the application of technology in the dispute resolution process, such as online mediation, can increase the effectiveness of BPSK's work. Cooperation with financial institutions is also important to strengthen the dispute resolution mechanism. Proposals to improve coordination and socialization programs involving financial institutions and consumers can increase understanding and awareness of the role of BPSK. An evaluation of existing regulations to assess their adequacy and provide recommendations for new policies or revisions to supportive policies is also needed to strengthen BPSK's authority.

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