

LAW ENFORCEMENT ON CONSUMER PROTECTION DISPUTE SETTLEMENT IN INDONESIA

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Abstract: The State of Indonesia is a unitary state based on law (Rechtstaat) and not based on power (Machstaat) which aims to regulate the life of the nation and state. In an effort to provide legal protection for the interests of consumers, the state has an important role in making consumers aware of their rights and obligations. It is also very important to empower consumers. Consumer protection is a term used to describe the legal protection provided to consumers in an effort to meet their needs from things that can harm consumers themselves. The main purpose of law enforcement is the existence of legal certainty to provide protection and security to the community. If there is a dispute between the consumer and the business actor, then the dispute resolution between the consumer and the business actor can be carried out through litigation (court) and non-litigation (outside court). Factors that become obstacles in law enforcement on consumer disputes cannot be separated from 3 (three) things, namely legal substance, legal structure and legal culture that affect the success of the law enforcement process.

Keywords: Law Enforcement, Protection, Consumers, Business Actors.

1. INTRODUCTION

The rule of law is a state concept that has developed over the past few decades. It is evident from the existence of thoughts about the concepts of the rule of law that have existed and developed long before the concept of the rule of law has been structured and organized as it is today.^[1] The state of Indonesia is a unitary state based on law (Rechtstaat) and not based on power (Machstaat) which aims to regulate the life of the nation and state, law is the leader and law is also inseparable from democracy, so from democracy justice can be realized. The 1945 Constitution is the concept of an Indonesian legal state in which there are Indonesian socio-cultural values and is the heart of the movement for Indonesia because without it the direction and goals of our beloved country are unclear and the words in it are designed and published with a very deep meaning.^[2]

Civil Procedure Law as a formal law that functions to maintain and enforce material civil law in the event of a violation. More concretely, according to Sudikno Mertokusumo, the Civil Procedure Code regulates how to file a claim for rights, examine and decide on it and the implementation of the decision. There must be a rule of thumb, namely the Procedural Law which is used as a legal basis in the examination of civil cases in court. Departing from the Civil Procedure Code that applies in positive law in Indonesia (*ius constitutum*) the source is very pluralistic and spreads in various laws and regulations. Based on Article 5 paragraph (1) of the Emergency Law no. 1 Year 1951 in a row, namely.^[3]

1. *Het Huziene Indonesisch Reglement* (HIR or the updated Indonesian Reglement STB 1848 No. 16, STB 1941 No. 44 applies to the jurisdictions of Java and Madura)
2. *Rechtsreglement Buitengewijsten* (RBG or Regional Reglement across STB 1927 No 227 applies in jurisdictions outside Java and Madura)

3. RV (BRV) *Burgerlijk Rechtsvoordering* which applies to European groups.
4. RO (*Reglement op de Rechterlijk organisatie in het beleid der justitie in Indonesie* or *Reglement* on the organization of judicial power STB 1847 No. 23.
5. Book IV BW, WVK, Bankruptcy Regulations

According to its function, law is divided into material law and formal law or procedural law. Civil procedural law is formal civil law, which basically functions to defend or enforce material civil law through the courts if there is a violation of material civil law or a dispute occurs. Even civil procedural law also regulates the procedure for obtaining legal rights and certainty when there is no dispute through the submission of an "application" to the court. However, in general, civil procedural law regulates the process of settling civil cases through judges in the court of preparing claims, filing lawsuits, examining lawsuits, court decisions up to the execution or implementation of court decisions.^[4]

Looking at current developments, when the world of transactions continues to evolve, regulations related to consumer protection are very necessary, considering that having a clear legal umbrella will make it easier for consumers to defend their rights in making transactions.

Humans as social beings will always need other people in their lives, including the need for other people to be able to meet their needs. This is also seen in the implementation of the economic life of our society. Where there are sellers, there must be buyers and where there are business actors, there must also be consumers who use their goods and services. The functions and roles of business actors and consumers are certainly different, but even though they are different, they are bound and cannot be separated. However, in practice, with differences in interests between consumers and business actors, it is very possible for disputes to occur.^[5]

National development aims to create a just and prosperous society that is materially and spiritually evenly distributed in an era of economic democracy based on Pancasila and the 1945 Constitution. The realization of a just and prosperous society must be supported by the state with policies and rules made based on proper considerations. The increasingly rapid economic development has given rise to an era called the era of globalization in which economic activities are not only carried out across regions but have crossed the territorial boundaries of a country. It is possible for foreign products to enter a country easily so that it is easy for people to consume goods. This situation allows for economic disputes ranging from disputes between countries to individual disputes. Disputes between countries use legal settlements between the government and the government, while individual disputes involving business actors and consumers have been facilitated by laws and regulations, including Law Number 8 of 1999 concerning Consumer Protection.^[6]

In these disputes, it is usually the interests of consumers who are harmed by business actors, although there are also naughty consumers who try to take advantage of business actors to provide compensation. Therefore, in the provisions of Article 45 paragraph 1 of Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as UUPK, it is stated that any harmed consumer can sue business actors through institutions tasked with resolving disputes between consumers and business actors or through a court located in in the general judiciary.^[7] If there is a dispute between the consumer and the business actor, the settlement of the dispute between the consumer and the business actor can be done through litigation (court) and non-litigation (outside court). Settlement of disputes through non-litigation channels is guided by the UUPK, while the settlement of consumer disputes through litigation is regulated in the UUPK and the regulation of the Civil Procedure Code.

Based on the description of the background above, the author tries to discuss further about law enforcement in the settlement of consumer protection disputes in the journal entitled "**Law Enforcement Consumer Protection Dispute Settlement in Indonesia**"

B. Formulation of the problem

Based on the background described above, it is interesting to study in the form of research entitled "**Law Enforcement Consumer Protection Dispute Resolution in Indonesia** ", The formulation of the problems discussed in connection with the above are as follows:

1. How is Law Enforcement on Consumer Protection Dispute Settlement in Indonesia?
2. Explain the factors that are obstacles in Law Enforcement against the Settlement of Consumer Protection Disputes in Indonesia?

2. RESEARCH METHODS

The writing used in this article is a normative and descriptive legal writing method. The research approach is normative by examining positive law and other legal materials including legal sources, as well as secondary legal materials to complete the reference for the results of this study. The technique used by the author to produce research outputs is through literature study. Utilization of legal materials in normative research methods to answer problems, through the management of legal materials, so that conclusions can be drawn from the results of a coherent analysis, through the arrangement of legal materials that are inventoried in a relevant and systematic manner.

3. LITERATURE REVIEW

Consumer protection is a term used to describe the legal protection provided to consumers in an effort to fulfill their needs from things that can harm the consumers themselves. industrial and technological development.

In Article 1 point 1 of Law Number 8 of 1999 concerning Consumer Protection it is stated: "Consumer protection is all efforts that guarantee legal certainty for consumer protection". The meaning of consumer protection as regulated in Article 1 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection is all efforts to ensure legal certainty to provide protection to consumers. Consumer protection has a broad scope including consumer protection in obtaining goods and services, which starts from the activity stage to obtain goods and services to the consequences of using these goods and services.^[8]

In order to protect consumers in Indonesia from things that can cause harm to consumers, on April 20, 1999 the Government has enacted Law Number 8 of 1999 concerning Consumer Protection (UUPK). The Consumer Protection Act is intended to be a strong legal basis for the government and non-governmental consumer protection agencies to make efforts to empower consumers through consumer development and education.

Based on Article 1 number 1 of the Consumer Protection Act, it is stated that consumer protection is all efforts that ensure legal certainty to provide protection to consumers. According to Happy Sutanto, legal certainty to provide protection to consumers in the form of protection of consumer rights, which is strengthened through a special law, gives hope that business actors do not act arbitrarily which always harms the rights of consumers.

Principles in consumer protection, namely:

1. The principle of benefit is to mandate that all efforts in the implementation of consumer protection must provide the maximum benefit to the interests of consumers and business actors as a whole.
2. The principle of justice is intended so that the participation of all people can be realized maximally and provide opportunities for consumers and business actors to obtain their rights and carry out their obligations fairly.
3. The principle of balance is intended to provide a balance between the interests of consumers, business actors and the government in a material and spiritual sense
4. The principle of consumer safety and security is intended to provide guarantees for security and safety to consumers in the use, use and utilization of goods and/or services that are consumed or used.
5. The principle of legal certainty is intended so that both business actors and consumers obey the law and obtain justice in the implementation of consumer protection, and the State guarantees legal certainty.

The origin of the dispute begins in a situation where there is a party who feels aggrieved by the other party. Usually it starts from feeling dissatisfied, subjective and closed experienced by individuals and groups. If feelings of disappointment or dissatisfaction are conveyed to the second party and the second party responds and can satisfy the first party, the conflict is over. On the other hand, if the difference of opinion must be sustainable, what is called a dispute will occur. Dispute in the everyday sense is intended as a situation where parties carrying out commercial efforts have a problem, namely wanting the other party to do or not do something but the other party refuses or does not do so.

Protection of consumers is very important, considering the increasing speed of science and technology which is the driving force for the productivity and efficiency of producers for the goods and/or services they produce in order to achieve business goals. In order to pursue and achieve these two things, either directly or indirectly, it is consumers who generally feel the impact.^[9]

The regulation of consumer protection is carried out by creating a consumer protection system that contains elements of open access and information, as well as ensuring legal certainty, protecting the interests of consumers in particular and the interests of all business actors, improving the quality of goods and services, providing protection to consumers from deceptive business practices and mislead and integrate the implementation, development, and regulation of consumer protection with the protection fields in other fields.^[10]

4. DISCUSSION

A. Law Enforcement Against Consumer Protection Dispute Resolution in Indonesia

The terms consumer law and consumer protection law have been heard very often. However, it is not clear exactly what is included in the material of the two. Because the consumer's position is weak, he must be protected by law. One of the characteristics, as well as the purpose of the law, is to provide protection (protection) to the public, so that consumer law and protection law are two areas of law that are difficult to separate and delineate. The Consumer Protection Act regulates consumer protection. However, in reality the Consumer Protection Act has not fully regulated electronic transactions, only a few articles can be used in electronic transactions. This is what makes there is still a lack of protection for consumers who make electronic transactions.

In an effort to provide legal protection for the interests of consumers, the state has an important role in making consumers aware of their rights and obligations. It is also very important to empower consumers. Consumer empowerment is a goal in increasing consumer awareness, ability and independence to protect themselves so as to avoid various negative access to the use of goods or services needed.

It can be seen in Law Number 8 of 1999 concerning Consumer Protection that does not provide a definition of consumer disputes. However, disputes can occur between consumers and business actors. A dispute can result in losses for consumers and business actors. Thus a problem or dispute involving the parties must be resolved. A consumer dispute based on the Consumer Protection Act can be resolved in 2 ways, namely:

1. Court

Consumer disputes can be categorized as civil disputes. The litigation procedure in consumer disputes is preceded by filing a lawsuit to the clerk of civil cases in the district court. Every consumer who is harmed or involved in a dispute can resolve the dispute through the general judiciary. Settlement of disputes against consumers through this court refers to the provisions concerning general courts that apply by taking into account the provisions of 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 court or out of court based on the voluntary choice of the disputing parties.
- c. Settlement outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as regulated by law.
- d. If a consumer dispute resolution effort has been chosen outside the court, a lawsuit through the court can only be taken if the effort is declared unsuccessful by one of the parties to the dispute.

2. Out of Court (Consumer Dispute Settlement Body)

A consumer dispute besides being able to be resolved through the courts, can also be resolved out of court through BPSK which carries out the handling and settlement of consumer disputes. In this case, the role of BPSK in its duties and implementation on consumer protection is the spearhead in the field to provide protection to consumers who have been harmed. For consumers who feel that their rights have been harmed, they can apply for a consumer dispute resolution to the BPSK secretariat. Provisions regarding the procedure for applying for a consumer dispute settlement are regulated in Article 15 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 dated December 10, 2001 concerning the implementation of the Duties and Authorities of BPSK.

The principles of consumer dispute resolution (PSK) procedures include:^[11]

1. Through conciliation

The provisions in article 1 point 9 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 defines conciliation as a process of resolving consumer disputes outside the court through BPSK to bring together the disputing parties and the settlement is left to the parties. Conciliation is one of the options in resolving consumer disputes that are outside the court, which as the intermediary is BPSK.

2. Mediation

Based on the provisions of Article 1 point 10 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 defines mediation as a process for resolving consumer disputes outside the court with the intermediary BPSK which is only an advisor and the settlement is left to the disputing parties. This dispute resolution where the initiative comes from one party or parties accompanied by the BPSK assembly as an active mediator or intermediary. The difference is with conciliation, where the BPSK Assembly as an intermediary is passive.

3. Arbitration

Settlement of consumer disputes where the parties fully give the BPSK Assembly to decide and resolve disputes that occur. The three ways of resolving consumer disputes as mentioned above are based on the choice and agreement of the disputing parties and not a tiered dispute resolution process. The results of the deliberations regarding dispute resolution both conciliation and mediation are stated in a written agreement which is set forth in the form of a BPSK decision, no later than 21 working days after the application is received at the BPSK secretariat. Likewise, in the event that the result of consumer dispute resolution is achieved through arbitration, the results are stated in the form of a decision by the Consumer Dispute Settlement Agency (BPSK), which is signed by the Chairman and Members of the BPSK Assembly, in which administrative sanctions are permitted.^[12]

B. Factors That Are Obstacles in Law Enforcement Against Consumer Protection Dispute Resolution in Indonesia

Law enforcement on consumer disputes cannot be separated from 3 (three) things, namely legal substance, legal structure and legal culture that affect the success of the process. This is in accordance with the Legal System theory put forward by Lawrence M Friedman which links these three things to success in law enforcement. Between legal substance, legal structure and legal culture, there will always be a relationship and mutual support, because with a good and complete substance that has fulfilled legal certainty for the community, it will be meaningless when the structure or law enforcement authorities do not have the commitment to carry out their duties. properly to ensure the implementation of law enforcement, the implementation of law enforcement will also be disrupted and vice versa with a fairly good substance and law enforcers who have carried out their duties in accordance with existing legal regulations, and even then it cannot be called the success of law enforcement. This is because the main goal of law enforcement is the existence of legal certainty to provide protection and security to the community.^[13]

Society consists of many components, with various characteristics, and in it there is a growing culture. This culture affects the success of the prevention and enforcement processes that will be carried out by the legal structure. There are several consumer problems at BPSK, namely:

1. Consumer awareness level;
2. The level of community knowledge regarding the flow of dispute resolution Obstacles in law enforcement in consumer dispute resolution, namely:

1. Legal Substance

Legally, with the Consumer Protection Act number 8 of 1999, in which it has regulated the rights and obligations of both consumers and business actors, actions that are prohibited for business actors to the responsibilities of business actors. This consumer protection law has provided limitations related to matters that are considered to be detrimental to consumers and are prohibited from being carried out by business actors. With the rules regarding the rights and obligations of the parties involved in consumer protection in this case are consumers and business actors, the law has provided limitations regarding the rights that they can fight for and get as well as their obligations as achievements that they must fulfill in order to get rights. those.

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This Consumer Protection Law also stipulates the duties and functions of the Institution that serves as a place for the parties (consumers and business actors) to be one of the means in resolving disputes or disputes regarding matters relating to the transaction process carried out.

In legal substance, the protection of consumers is quite good, but there are several weaknesses that this Consumer Protection Act has, including:

- a. Article 52 letter a of the Consumer Protection Law lists the duties and authorities of BPSK to carry out handling and settlement of consumer disputes by means of mediation or arbitration or conciliation, this means that when the mediation process fails, there is no common ground for problems from consumers with businessmen. BPSK does not have the authority to decide disputes between consumers and business actors if it is not arbitration of choice from the parties for the dispute resolution system.
- b. In article 52 letter c of the Consumer Protection Act, it states the duties and authorities of BPSK, one of which is regarding the supervision of the inclusion of standard clauses, but to ensure legal certainty of the supervision process, this Law does not stipulate the procedures for supervision or sanctions that can be imposed. to business actors who violate the BPSK.
- c. In article 52 letter m, one of the duties and authorities of BPSK is to impose administrative sanctions on business actors who violate the provisions of the consumer protection law. However, once again with the authority to impose sanctions on business actors, BPSK does not have guidelines to be able to apply this in the field.

The point is that the rules regarding consumer protection already have regulations that regulate well the protected targets and law enforcers who should protect them. However, the weakness is as described above, with a fairly complete authority BPSK does not have supporting guidelines to carry out its duties, so that this becomes an obstacle to implementation in the field.

2. Legal Structure

Structural law enforcement has become ineffective, because BPSK as the competent authority has difficulty in taking real action against business actors who violate it, especially in this case related to the issue of the inclusion of standard clauses and other violations committed by business actors.

Another problem is related to human resources, in BPSK there are still few who have knowledge in the field of consumer protection, operational facilities for BPSK are still limited. Externally the factors that influence the problems at BPSK are:

- a. The tendency of business actors to not prioritize consumer protection.
- b. There are still business actors who are not cooperative, to solve consumer problems.

3. Legal Culture

Culturally, in this case it is about people's understanding of the existing rules, if in this case it is the rules regarding consumer protection. The task of protecting consumers does not only lie with law enforcement in consumer protection, but also the responsibility of the community itself as consumers to be smarter in choosing products and services and be critical of business actors who will conduct transactions with them in terms of the relationship between consumers and businesses. But this has not grown well in the culture of our society. They tend to only see material things, when they like it and are sold at a cheap price they take it.

5. CONCLUSION

1. In an effort to provide legal protection for the interests of consumers, the state has an important role in making consumers aware of their rights and obligations. It is also very important to empower consumers. Consumer empowerment is a goal in increasing consumer awareness, ability and independence to protect themselves so as to avoid various negative access to the use of goods or services needed. Consumer Protection can be resolved in 2 ways, namely court and Out of Court (Consumer Dispute Settlement Agency).

2. Factors that become obstacles in law enforcement on consumer disputes cannot be separated from 3 (three) things, namely legal substance, legal structure and legal culture that affect the success of the process, the main goal of law

enforcement is the existence of legal certainty to provide protection and security to the community. In legal terms, the protection for consumers is quite good, but there are several weaknesses that the Consumer Protection Act has. In the legal structure, law enforcement is not effective, because the competent authorities have difficulty in taking real action against business actors who violate, especially in this case related to the issue of the inclusion of standard clauses and other violations committed by business actors. In legal culture, the problem is that people tend to only see material things, when they like it and are sold at a cheap price they take it.

6. SUGGESTION

1. The government needs to be more active in carrying out supervision and guidance so that it can increase the awareness of business actors in providing comfort and satisfaction to consumers, as well as revise the law to adapt to technological developments today.
2. It is expected that consumers will remain careful and careful in buying and using an item purchased.

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