

The Application of Legal System Theory in Handling Consumer Dispute by the Consumer Dispute Settlement Agency (BPSK) Of Kuningan Regency

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Abstract. The rapid influence of technology development— the business world is affecting the level of competition. Business actors are required to do numerous marketing activities to meet consumer needs. These activities are frequently profit-oriented and disregard consumer rights and protection. In fact, Consumers can be harmed through inappropriate information, product counterfeiting, and product quality. Thus, consumers, producers, or business actors' disputes are existed. This study aims to determine and examine BPSK regulation of consumer dispute resolution and its implementation in the Kuningan Regency. This study employed the empirical-juridical method with a socio-legal approach. The study revealed BPSK regulation on consumer dispute resolution in Kuningan Regency has referred to the law of consumer protection. Meanwhile, the implementation of BPSK duties and authorities is up to the Decree of the Ministry of Industry and Trade Republic of Indonesia. Structurally, the application of legal system theory on consumer dispute resolution indicates that human resource is incompetence and BPSK is still lacking in owning infrastructure. These things become a hindrance in dispute resolution. In addition, people are not fully aware of their rights and obligations as consumers with legal protection. Accordingly, the Government's systematic efforts to reform the law and socialize the role and function of BPSK—resolving disputes between consumers and business actors, are highly needed.

Keywords: Consumer; Dispute; Legal System

1 Introduction

Being a country that is developing in all areas, the government attempts this development would be indulged by all citizens. Moreover, the state constitution of Indonesia is a democratic which places people's sovereignty as the basis for arranging a national development system. Accordingly, national development must be directed to the realization of a just and prosperous society. This should be based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia.[1]

Realizing a just and prosperous society is not an easy task. Thus, the government and society need to endeavor these ideals earnestly. This is because in the current era we enter the world of free-market due to technology and information advances.[2] One of the government's efforts in the trade sector is the enactment of Law Number 8 of 1999 on Consumer Protection. This law cannot be separated from countless related problems occurred. This is also mentioned in the preamble of the Consumer Protection Act point b

“that the national economic development in the globalization era must support the growth of the business world. Thus, various goods and/or services containing technology are produced to improve the welfare of the community and obtain goods and/or services certainty of trade without resulting in consumer losses”. [3]

The swift demand of the public for goods and/or services is used by business actors to carry out various forms of economic business activities to seek a profit. For this reason, they frequently disregard consumer rights which results in an unbalanced position between business actors and consumers.[4]

The ultimate factor that becomes consumers’ weakness is the low level of consumers’ right awareness. This is due to the low level of consumer education. Therefore, the Consumer Protection Law is becoming a strong legal basis for the government and non-governmental consumer foundations in empowering consumers through guidance and education. Law on Consumer Protection Number 8 of 1999, a provision on consumer dispute resolution, becomes one of the solutions in resolving consumer-related matters.[5]

In solving consumer disputes, Article 45 Paragraph (1) of the Consumer Protection Law states that consumer disputes settlements can be moved through the courts or out of court based on the disputing parties' voluntary choices. However, this does not mean the parties must firstly agree in filing a lawsuit.[6]

The government's responsibility for consumer protection is in the form of establishing a Consumer Dispute Settlement Agency or BPSK. BPSK is a non-litigation agency tasked with and authorized to examine, resolve, and settle disputes between consumers and producers, or business actors related to non-trading goods and services used. [7]

The procedure for resolving consumer disputes by BPSK is regulated according to Article 4 paragraph (1) of the Decree of the Ministry of Industry and Trade Republic of Indonesia Number: 350/MPP/Kep/12/2001 the Implementation of BPSK's Duties and Authorities. Consumer dispute resolution by BPSK can be done through mediation, arbitration, and conciliation based on the choice and approval basis of the concerned parties.[8]

In Kuningan Regency, consumer dispute resolution handled by BPSK keeps increasing every year as shown in the following table:[9]

No	year	Number of cases	Dispute Resolution Method		
			conciliation	Mediation	Arbitration
1.	2018	49	20	29	-
2.	2019	45	16	28	-
3.	2020	60	19	41	-
Total		154	5	98	-

Referring to the aforementioned table, the level of the community's legal awareness of consumer rights has begun to form. This is certainly becoming a challenge for BPSK in Kuningan Regency to play a more role in resolving disputes submitted by consumers. Based on the foregoing background, the authors are interested in conducting research on how BPSK regulates consumer dispute resolution, and how is the application of legal system theory of consumer dispute resolution by BPSK in Kuningan Regency?

2 Method

Based on the problem under-studied, the study employed juridical-empirical methods. This is because this study was conducted to analyze consumer dispute resolution done by the Consumer Dispute Settlement Agency (BPSK). The data collection technique was triangulation (combined). Meanwhile, the data analysis was inductive because the results of qualitative research emphasize more on meaning than generalization. Additionally, this study was specifically used descriptive-analytical research. The juridical-empirical method, on the other hand, involved data collection techniques of library research and field studies. [10]

3 Results and Discussions

3.1. The regulation of Consumers Dispute Settlement Agency (BPSK) refers to the laws and regulations

The legal basis for the establishment of the BPSK is Article 49 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection and is reaffirmed in Article 2 of the Decree of the Ministry of Industry and Trade Number 350/MPP/Kep/12/2001 stating that each city or regency must form a BPSK. The BPSK is presented as an institution that protects consumer interests related to out-of-court disputes. Up to these days, consumer disputes have been resolved through a lawsuit in court. However, it is possible for the judiciary to not accommodate consumers' disputes due to long processes and highly bureaucratic reasons.

To fulfill the previously-mentioned provisions, BPSK of Kuningan Regency has been established based on the Decree of the President Republic of Indonesia Number 22 of 2013, the Establishment of a Consumer Dispute Settlement Agency in Sumedang Regency, Kuningan Regency, Wonosobo Regency, Ngawi Regency, Kab. Tanjung Jabung Timur, Sarolangun Regency, Donggala Regency, East Belitung Regency, Pontianak Regency, Ogan Ilir Regency, Palu City, and Kotamobagu City. To ease the consumers in reaching out to BPSK, this decree does not include territory restrictions. Thus, the consumers can file a complaint to any BPSK they desire. Each consumer who is harmed can sue the business actors through responsible institutions or courts under the general court environment. [11]

In its implementation, BPSK of Kuningan Regency resolves consumer disputes based on the provisions of Article 4 letter c of Government Regulation of the Republic of Indonesia Number 58 of 2001, the Guidance and Supervision of the Implementation of Consumer Protection, states increasing the role of national and local BPSK can be done through quality improvement of human resources and institutions.

The guidance and supervision by the Government are not merely regulated in Law Number 8 of 1999 on Consumer Protection but are also regulated in Government Regulation Number 58 of 2001, the Guidance and Supervision of the Implementation of Consumer Protection. The later regulation elaborates more on the guidance and supervision by the Government. One of the objectives is to create a business climate and foster healthy relationships between business actors and consumers.

3.2. The application of legal system theory by BPSK of Kuningan Regency in resolving consumer disputes

The Legal system theory was initiated by Lawrence Meire Friedman. According to him, the elements of the legal system are consisting legal structure, legal substance, and legal culture.[12] The legal structure includes executive, legislative, judicial agencies, and any related institutions. The legal substance covers norms, regulations, and laws. Meanwhile, Legal culture includes the community's views, habits, and behavior on the values and expectations of the applicable legal system. In other words, legal culture is the climate of social thinking of how the law is applied, violated, or implemented.[13]

Structurally, human resources and infrastructure become the main hindrances of BPSK of Kuningan Regency in resolving consumer disputes. Human resources at the BPSK of Kuningan Regency are 14 (fourteen) people. However, only a few are experts in handling consumer disputes and no one is having a Mediator or Arbitrator certification.

The budget and infrastructure of the BPSK in Kuningan Regency come from the Regional Revenue and Expenditure Budget (APBD) of Kuningan Regency. However, since Law 23 of 2014 concerning Regional Government was enacted, trade affairs that regulate consumer protection, become part of the Provincial Government affairs. Thus, the budget of BPSK implementation in Kuningan Regency is taken from the Regional Revenue and Expenditure Budget (APBD) in West Java Province. For this reason, its implementation becomes more demanding, the filing and the financial reporting process.

Substantially, the implementation of consumer dispute resolution by BPSK is constrained due to the shortcoming in the regulations of the Consumer Protection Act, Article 52 letter a, the consumer protection law, which lists the BPSK's duties and authorities in handling and settling the consumer disputes by mediation, arbitration, or conciliation. This indicates that once the mediation process fails, there is no common ground for problems between consumers and business actors. This is because BPSK does not have the authority to do so unless it is not an arbitration choice by the parties.

Furthermore, Article 52 letter c of the Consumer Protection Law includes Standard Clauses. However, to ensure legal certainty from the supervision process, this Law does not regulate the procedures for supervision or sanctions that can be imposed on business actors who violate such a law. Likewise, Article 52 letter m regulates administrative sanctions to business actors who violate provisions of the consumer protection law. In reality, BPSK does not have the guideline and authority to impose such an action.

Culturally, the Kuningan community applies an agrarian culture which is characterized by a family culture. Therefore, all matters related to disputes are always avoided. Even if the problems occur, they prefer to forgive. This condition complicates the BPSK in tracing the problems encountered. The responsibility to protect consumers does not purely on law enforcers' shoulders but also on the community as consumers. In such a way, they can be smart buyers (know how to select appropriate products and services) and be critics of their relationship with business actors who will have the transactions with them. Unfortunately, this has not grown well in the culture of our society.

4 Conclusions

- a. BPSK Regulation in Resolving Consumer Disputes in Kuningan Regency covers in: Law Number 8 of 1999 concerning Consumer Protection, Government Regulation of

the Republic of Indonesia Number 58 of 2001 on the implementation of Guidance and Supervision on Consumer Protection, Presidential Decree of the Republic of Indonesia Number 22 of 2013 on the Establishment of BPSK in Kuningan Regency and other related agency, the Decree of the Ministry of Industry and Trade Republic of Indonesia Number: 350/Mpp/Kep/12/2001 concerning the Implementation of BPSKs Duties and Authorities.

- b. The application of the Legal System theory-- the implementation of dispute resolution by BPSK of Kuningan Regency. Structurally, they do not have the resources and infrastructure needed to handle dispute resolution. Substantially, there must be a renewal of the Consumer Protection Act. Culturally, the Kuningan community has an agrarian culture characterized by a family culture. Thus, all matters related to disputes are always avoided. Even if the problems exist, they prefer to forgive.

5 Recommendations

- a. The government should immediately conduct legal reforms to the Law Number 8 of 1999 concerning Consumer Protection, Government Regulation of the Republic of Indonesia Number 58 of 2001 on Guidance and Supervision of the Implementation of Consumer Protection, and Decree of the Ministry of Industry and Trade Republic of Indonesia Number: 350/Mpp/Kep /12/2001 concerning the Implementation of BPSK Duties and Authorities. They are no longer suit society's development and the advances in information technology.
- b. There is a need to strengthen BPSKs Duties and Authorities in the regions. This is to ensure independence and legal certainty since each decision made by BPSK is principally final and binding.

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