



## RESOLUTION OF CONSUMER DISPUTES THROUGH ARBITRATION BASED ON RULING NUMBER 038/ARBITRASE/2022/BPSK.MDN

**Abdul Rahman Maulana Siregar<sup>1</sup>, Rico Nur Ilham<sup>2</sup>, Sardi<sup>3</sup>, Sri Devi Zebua<sup>4</sup>**

<sup>1,2,3,4</sup> Master of Law Program, Faculty of Social Sciences Universitas Pembangunan Panca Budi, Medan

<sup>2</sup> Faculty of Economics and Business Universitas Malikussaleh

Correspondence Email: [abdulrahmanms@dosen.pancabudi.ac.id](mailto:abdulrahmanms@dosen.pancabudi.ac.id)

### ABSTRACT

Dispute problems often occur in the community and become legal problems and problems that need to be discussed from a juridical aspect, in order to find out the basis for a problem that arises due to indications that arise from misunderstanding, tolerance in the problem, resulting in confusion and the emergence of a problem. which was ultimately resolved through litigation and non-litigation efforts. Specifically regarding the discussion of dispute resolution efforts through non-litigation, in this case using the arbitration settlement method requires a resolution of consumer disputes through arbitration. The law provides an alternative way by providing non-litigation or out-of-court dispute resolution in the form of conciliation, mediation and arbitration. As part of alternative dispute resolution, consumer dispute resolution is resolved through the Consumer Dispute Resolution Agency (BPSK) as in dispute Number 038/Arbitrase/2022/BPSK.Mdn. BPSK is an alternative solution in resolving consumer disputes regarding problems in society, although it does not escape peace efforts or legal resolution in judicial procedures.

**Keywords:** *Dispute Resolution, Consumers and Arbitration*

### A. INTRODUCTION

In general, disputes often occur due to disagreements between the two parties in a relationship. Relationships that require each other between business actors and consumers in business activities often occur. This relationship is related to the use and utilization of goods and services sold by business actors. The sale and purchase agreement results in the emergence of a legal relationship, which means a relationship between two legal subjects that gives rise to rights and obligations that must be fulfilled and obeyed by both parties. Consumer disputes occur due to violations of consumer rights, one example of which is breach of contract as intended in Article 1243 of the Civil Code (hereinafter abbreviated to the Civil Code), namely non-fulfillment of obligations by one of the parties. Indonesia as a legal state must bear all kinds of rights inherent in every individual in various fields, including rights arising from sales or trade agreements. Article 28D paragraph (1) of the 1945 Constitution explains that every citizen has the right to obtain legal protection and certainty.

The interest of business actors is to obtain the maximum possible profit from transactions with consumers, while consumers have an interest in obtaining satisfaction through fulfilling their needs for certain goods and services. However, in this relationship there is often inequality between the two, in general consumers are in a weak bargaining position as a result of which they become targets of exploitation from business actors who socially and economically have a strong position. Even the enactment of Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated to UUPK), cannot directly guarantee the implementation of consumer protection. Therefore, to protect consumers, it is very necessary to have an institution that has the authority to resolve consumer disputes in a short time and at no cost and in an easy way (method).

The dispute resolution referred to can be resolved through non-litigation efforts or outside the court using the methods of Conciliation, Mediation and Arbitration. Efforts to provide adequate protection for consumer interests are important for finding solutions in resolving disputes that occur between consumers and business actors. The issue of consumer protection is not merely a problem for everyone but is a common problem and a national problem where basically every person as a consumer must be protected and have their rights guaranteed. Therefore, to protect consumer rights is to protect everyone. This protection includes protection against losses for consumers due to using or consuming goods and/or services that are not in accordance with what the consumer desires. Consumers can submit claims for losses experienced to the Consumer Dispute Resolution Agency (BPSK) as occurred in dispute Number 038/Arbitrase/2022/BPSK. Mdn. In this consumer dispute, the resolution is carried out through arbitration by BPSK Medan City.

In this dispute, the consumer submitted the dispute to BPSK Medan City and resolved it through arbitration because it was an effort to resolve consumer disputes as contained in Law Number 8 of 1999 concerning Consumer Protection (UUPK). From this dispute, business actors in carrying out their business have harmed consumers and violated Article 7 of Law no. 8 of 1999 concerning Consumer Protection, namely having bad intentions and not serving consumers correctly, honestly and discriminatorily. From the resolution of the dispute, it is hoped that the model for resolving consumer disputes through arbitration at the Consumer Dispute Resolution Agency (BPSK) will be able to provide a fair solution for resolving disputes that occur between consumers and business actors.

#### **B. Formulation of the problem**

1. How effective is the Consumer Dispute Resolution Agency (BPSK) as a consumer dispute resolution institution?
2. How are consumer disputes resolved through arbitration based on decision Number 038/Arbitase/2022/BPSK.MDN?

#### **C. Research methods**

This research was carried out using normative juridical research methods, namely legal research which is based on studying and discussing legal rules, doctrines or principles in legal science by examining library materials or conducting library research. Legal research based on literature, legal theory and laws and regulations that develop in society from the highest to the lowest. The problems contained in this research will be studied from the relevant legal provisions and regulations, then analyzed to make legal discoveries related to the legal problems in these regulations. Apart from that, it is also carried out using a statutory approach, namely an approach that uses positive statutory regulations as a medium for analysis. As well as using a conceptual approach, namely an approach that uses legal concepts as a starting point for analyzing legal problems that occur.

#### **D. DISCUSSION**

##### **1. Effectiveness of the Consumer Dispute Resolution Agency (BPSK) as a Consumer Dispute Resolution Agency**

When referring to the existence of the UUPK in Article 56 Paragraph (2), it is as if BPSK is placed as the first level decision institution, while the District Court is the appellate level court. This is further emphasized when the regulations also state that parties are given a wider opportunity to submit appeals without having to be seen as whether they are business actors or consumers. The objection referred to in Article 56 Paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection is nothing more than an appeal as regulated in the civil procedural law applicable in the General Courts. However, in order



for the BPSK decision to have the power to implement the decision, it must be requested to determine the fiat of execution at the District Court (PN) where the aggrieved consumer lives. However, in practice, it is difficult to request a fiat of execution through the District Court for various reasons stated by the District Court, including the following:

- a. The BPSK decision does not contain: "For Justice Based on Belief in One Almighty God", so it cannot possibly be executed.
- b. There are no regulations or instructions regarding procedures for submitting requests for execution of BPSK decisions, so that the final and binding force of BPSK decisions cannot fully guarantee legal protection for consumers.

As we all know, the only regulation that supports BSPK until now is UUPK. This situation will affect the strength of the product or output produced by BPSK. The impact is that when the legal product is tested by the judiciary (judiciary), the BPSK decision must be cancelled, the cause is the weak legal basis. As per Supreme Court Regulation Number 01 of 2006 concerning Procedures for Filing Objections to Decisions of the Consumer Dispute Settlement Body, that to BPSK Decisions which are final and binding in essence no objection can be submitted, unless certain conditions are met as regulated in Supreme Court Regulation Number 01 2006.

Objection is an effort for business actors and consumers who do not accept the BPSK decision. Objections to consumer disputes can only be submitted to arbitration decisions issued by BPS. Objections to BPSK Decisions can be submitted by business actors or consumers to the District Court and BPSK is not a party in the case of objections submitted by business actors or consumers. Furthermore, objections to the BPSK decision will be examined and decided by the Panel of Judges. In this case, discussing the effectiveness of the law means discussing the power of the law in regulating and/or forcing people to obey the law itself. The law can be effective if the factors that influence the law can function as well as possible. From the description above, if it is related to the effectiveness of BPSK as a consumer dispute resolution institution, then the institution can be said to be effective if:

- a. Having good, complete, systematic, non-contradictory legal instruments in one system.
- b. Having adequate and well-maintained infrastructure, including having qualified human resources.
- c. BPSK decisions can be respected and implemented properly.
- d. Supported by public awareness of their rights and obligations as consumers.

However, if you pay attention to several BPSK decisions, it can be seen that there is a weakness in this juridical power, as evidenced by several examples of BPSK cases that were annulled by the Supreme Court. Another finding regarding the annulment of BPSK decisions is that BPSK is an institution that is similar to quasi-judiciary because it has the same function as resolving disputes, namely having an adjudication function. Thus, there are limits to the extraterritorial power of decisions and the scope of its duties and authority as explained in the UUPK and Supreme Court Regulation Number 01 of 2006. Basically, BPSK only has the authority to resolve consumer disputes, but what constitutes a consumer dispute and its limitations are not regulated in the provisions. UUPK, which basically has parties in consumer disputes, namely business actors and consumers.

## **2. Consumer Dispute Resolution Through Arbitration Based on Decision Number 038/ Arbitrase/2022/ BPSK.MDN**

The Consumer Dispute Resolution Agency (BPSK) was established based on Presidential Decree Number 90 of 2001. The Consumer Dispute Resolution Agency (BPSK) is a body tasked with handling and resolving disputes between business actors and consumers, with the following duties and authorities:

- a. Carry out handling and resolution of consumer disputes, by means of mediation, conciliation or arbitration.
- b. Providing consumer protection consultation.
- c. Supervise the inclusion of standard clauses.
- d. Report to the general investigator if there is a violation of the provisions of the Consumer Protection Law
- e. Receive complaints, both written and unwritten, from consumers regarding violations of consumer protection.
- f. Conduct research and examination of consumer protection disputes.
- g. Summon business actors who are suspected of violating consumer protection.
- h. Summon and present witnesses, expert witnesses and/or anyone deemed to have knowledge of violations of the UUPK.
- i. 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.
- j. Obtain, examine and/or assess letters, documents or other evidence for investigation and/or examination.
- k. Decide and determine whether or not there is any loss on the part of the consumer.
- l. Notify decisions to business actors who violate consumer protection.
- m. Imposing administrative sanctions on business actors who violate UUPK provisions.

The routine task carried out by the Consumer Dispute Resolution Agency (BPSK) through the secretariat is to receive written and unwritten complaints from consumers regarding violations of consumer rights. The Consumer Dispute Resolution Agency (BPSK) will conduct research and examine consumer complaints and then summon business actors who are suspected of having committed violations of consumer protection and carry out handling and resolution of consumer disputes by means of mediation or arbitration or conciliation to then decide and determine whether they exist or not. losses on the part of consumers. Arbitration is a method of resolving disputes outside of court which is carried out at the Consumer Dispute Resolution Agency (BPSK). Settlement of disputes through arbitration is a good and concrete solution in resolving various problems that arise between consumers and business actors. Consumers and business actors consider dispute resolution through arbitration to be a fairer solution, because this arbitration is agreed to by the parties and the decision on the dispute is handed over entirely to the BPSK panel which consists of consumer elements, business actors and government elements as chairman of the panel.

Even though in the arbitration process there is no peace between the two parties, the members of the Consumer Dispute Settlement Agency panel who are the arbitrators can decide what is best for both parties. Settlement of consumer disputes by means of Arbitration is carried out completely and decided by the Panel acting as Arbitrator, this is in accordance with Article 5 paragraph (3) Minister of Industry and Trade Decree Number 350 of 2001. The nature of the decision is final and binding as regulated in Article 54 paragraph (3) Law Number 8 of 1999 concerning Consumer Protection. The general principle applied in alternative dispute resolution applied in arbitration is the principle that contains the voluntariness of the parties to the dispute. This consumer dispute resolution model includes dispute resolution outside of court. Dispute resolution outside of court is mentioned in Article 45 paragraphs (2), (3), and (4) of Law Number 8 of 1999 concerning Consumer Protection. Out-of-court dispute resolution is carried out to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that losses suffered by consumers will not occur again or will not happen again.



However, in resolving consumer disputes by means of arbitration, the parties choose an arbitrator from BPSK members who come from elements of business actors and consumers as members of the Assembly. The arbitrator selected by the parties then selects a third arbitrator from the BPSK members who come from the Government element as Chair of the Assembly. The Chairman of the Panel during the trial is obliged to provide instructions to consumers and business actors regarding the legal measures used by consumers and business actors in dispute. This is an application of the principles of transparency and freedom of choice for consumers and business actors in disputes. The procedure for resolving consumer disputes outside of court through arbitration is different from conciliation or mediation, in that through arbitration the Tribunal acts actively to reconcile the parties to the dispute if an agreement cannot be reached. Persuasive methods are still carried out by providing explanations to the parties to the dispute regarding statutory regulations in the field of consumer protection. In this way, decisions regarding resolving disputes fall entirely under the authority of the BPSK Council.

The arbitration settlement procedure at BPSK is quite simple. Consumers come directly to BPSK and then officers at the BPSK secretariat will serve consumers who want to complain about their problems. The officer will give the consumer a complaint form for the consumer to fill out. Complaints can be made in writing or verbally. Consumers who make complaints to BPSK are not charged a court fee or are free of charge. Meanwhile, BPSK's operational costs are covered by the APBD. Apart from being free of charge, the consumer complaint procedure is also quite easy, namely consumers or their heirs can make a complaint to BPSK.

A written request for consumer dispute resolution must contain correctly and completely the following:

- a. The full name and address of the consumer, heir or proxy accompanied by proof of identity
- b. Full name and address of business actor
- c. The goods or services complained of
- d. Proof of acquisition (bonds, invoices, receipts and other proof documents)
- e. Information about the place, time and date the goods or services were obtained
- f. Witnesses who know that the goods or services were obtained
- g. Photos of goods and service implementation activities, if any.

Applications for resolving consumer disputes made in writing are then accepted by the BPSK Secretariat and proof of receipt is given to the applicant, in this case to the consumer. Documents regarding requests for consumer dispute resolution, both written and unwritten, are recorded by the BPSK Secretariat and affixed with the date and registration number. BPSK secretarial officers will summon the parties to the dispute to meet at the trial. From the trial, the next step can be determined whether consumers and business actors can still be reconciled or whether they have to take the settlement steps that have been determined, in this case arbitration.

This is different if a consumer sues a business actor in district court, then the burden of proof is on the consumer. Evidence in resolving consumer disputes, in the form of:

- a. Goods and/or services
- b. Statement of the parties to the dispute
- c. Statements from witnesses and/or expert witnesses
- d. Letters and/or documents
- e. Other supporting evidence.

The procedure for resolving consumer disputes through arbitration implemented by BPSK, if implemented properly, can be a good solution in protecting consumers. Thus, the resolution of consumer disputes with decision Number 038/Arbitrase/2022/ BPSK.Mdn, is

resolved through the dispute option through arbitration. In this case, the consumer dispute that occurred is based on Number 038/Arbitrase/2022/BPSK. Mdn, in this consumer dispute the resolution was carried out through arbitration by BPSK Medan City. Settlement of consumer disputes through arbitration based on Decision Number 038/ Arbitrase/2022/ BPSK.MDN, consumers submit the dispute to BPSK Medan City and resolve it through arbitration because it is an effort to resolve consumer disputes as contained in Law Number 8 of 1999 concerning Consumer Protection (UUPK).

From this dispute, business actors in carrying out their business have harmed consumers and violated Article 7 of Law no. 8 of 1999 concerning Consumer Protection, namely having bad intentions and not serving consumers correctly, honestly and discriminatorily. From the arbitration award with Number 038/Arbitrase/2022/ BPSK.Mdn, business actors in carrying out their business activities do not listen to complaints from consumers regarding the inconvenience of living in The Reiz Condo Apartment which has changed function to mixed function and ask for the consumer's money to be returned and the unit handed back to the business actor. Consumers suffered losses due to the purchase of 1 unit of The Reiz Condo Panjar Apartment which was not in accordance with the agreement in the original brochure, namely Private Residential as a Residential function, not mixed function and for this reason the business actor had to return the consumer's money. In deciding consumer disputes through arbitration, the agreement is not within the authority of BPSK to adjudicate it but rather with the consumer in giving goods or in the form of an apartment, which is a consumer's right which is violated by the business actor. Apart from that, it is also not authorized to grant interest costs as well as compensation equivalent in value to goods purchased without interest.

Based on a consumer dispute with Number 038/Arbitration/2022/ BPSK. Mdn, every consumer who is harmed can sue the business actor through the Institution tasked with resolving disputes between business actors and consumers and because the consumer submits the case to BPSK, the resolution through arbitration is a consumer dispute that demands compensation for damage, pollution and/or damage. suffer losses as a result of consuming goods and/or utilizing services. The existence of UUPK which protects the interests of consumers is not intended to kill the businesses of business actors but on the contrary. The existence of consumer protection can encourage a healthy business climate and give birth to resilient companies and can improve the attitude of business actors who are able to take responsibility in facing competition through the presence of quality goods and/or services. The results of resolving consumer disputes by means of arbitration are made in the form of a panel decision signed by the chairman and members of the panel. The BPSK Council is obliged to resolve consumer disputes no later than 21 (twenty one) working days after the requirements for the lawsuit are met. The panel's decision is a BPSK decision, where according to Article 40 paragraph (1) of the Minister of Industry and Trade Decree Number 350 of 2001, the BPSK decision can be in the form of: Peace, the lawsuit is rejected or the lawsuit is granted.

Furthermore, in paragraph (2), if the lawsuit is granted, the decision stipulates the obligations that must be carried out by the business actor. These obligations take the form of fulfilling:

- a. Compensation as intended in Article 12 paragraph (2) and or,
- b. Administrative sanctions in the form of determining compensation of a maximum of Rp. 200,000,000,- (two hundred million rupiah).

Compensation as intended in Article 12 paragraph (2) of Minister of Industry and Trade Decree Number 350 of 2001 is in the form of: Refund of money, Replacement of goods and/or services of the same type or equivalent value or Health care and/or provision of compensation. As per Supreme Court Regulation Number 01 of 2006 concerning Procedures for Filing Objections to Decisions of the Consumer Dispute Settlement Body,



that to BPSK Decisions which are final and binding in essence no objection can be submitted, unless certain conditions are met as regulated in Supreme Court Regulation Number 01 2006.

Objection is an effort for business actors and consumers who do not accept the BPSK decision. Objections to consumer disputes can only be submitted to arbitration decisions issued by BPSK. Objections to BPSK Decisions can be submitted by business actors or consumers to the District Court and BPSK is not a party in the case of objections submitted by business actors or consumers. Furthermore, objections to the BPSK decision will be examined and decided by the Panel of Judges. The consumer submits a request for execution of a BPSK decision that is not objected to the District Court at the legal domicile of the consumer concerned or in the jurisdiction of the BPSK that issued the decision. The request for execution of a BPSK decision that has been examined through an objection procedure is determined by the District Court which decides the objection case in question.

## E. CONCLUSION

1. As per Supreme Court Regulation Number 01 of 2006 concerning Procedures for Filing Objections to Decisions of the Consumer Dispute Settlement Body, that to BPSK Decisions which are final and binding in essence no objection can be submitted, unless certain conditions are met as regulated in Supreme Court Regulation Number 01 2006. Objection is an effort for business actors and consumers who do not accept the BPSK decision. Objections to consumer disputes can only be submitted to arbitration decisions issued by BPSK. In this case, discussing the effectiveness of the law means discussing the power of the law in regulating and/or forcing everyone to obey the law itself. The effectiveness of BPSK as a consumer dispute resolution institution, if: Has good, complete, systematic, non-contradictory legal instruments in one system, Has adequate and well-maintained infrastructure, including qualified human resources, BPSK decisions can be respected and implemented well and supported by public awareness of their rights and obligations as consumers.
2. The procedure for resolving consumer disputes through arbitration implemented by BPSK, if implemented properly, can be a good solution in protecting consumers. Thus, the resolution of consumer disputes with decision Number 038/Arbitrase/ 2022/BPSK.Mdn, is resolved through the dispute option through arbitration. Settlement of consumer disputes through arbitration based on Decision Number 038/ Arbitrase/2022/ BPSK.MDN, consumers submit the dispute to BPSK Medan City and resolve it through arbitration because it is an effort to resolve consumer disputes as contained in Law Number 8 of 1999 concerning Consumer Protection . In deciding consumer disputes through arbitration, the agreement is not within the authority of BPSK to adjudicate it but rather with the consumer in giving goods or in the form of an apartment, which is a consumer's right which is violated by the business actor. Apart from that, it is also not authorized to grant interest costs as well as compensation equivalent in value to goods purchased without interest. The existence of UUPK which protects the interests of consumers is not intended to kill the businesses of business actors but on the contrary. The existence of consumer protection can encourage a healthy business climate and give birth to resilient companies and can improve the attitude of business actors who are able to take responsibility in facing competition through the presence of quality goods and/or services.

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