

## ARBITRATION AS AN ALTERNATIVE FOR RESOLUTION OF CONSUMER DISPUTES THROUGH AN ARBITRATION CLAUSE BASED ON RULING NUMBER: 148/Pts.ARB/BPSK-BB/XII/2017

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### ABSTRACT

In resolving consumer disputes, there are various alternative dispute resolutions. In general, dispute resolution can be divided into two types, namely through litigation and non-litigation models, each of which has different characters and consequences in its resolution. Law Number 8 of 1999 concerning Consumer Protection states that resolving consumer disputes outside of court is carried out to reach an agreement regarding the form and amount of compensation or regarding certain actions to ensure that losses will not occur or reoccur to consumers. In this article, we will discuss the process of resolving consumer disputes in Decision Number 148/Pts.ARB/BPSK-BB/XII/2017? and How Effective is the Implementation of Consumer Dispute Decision Number 148/Pts.ARB/BPSK-BB/XII/2017? The data collection technique used in this research is through normative research. Dispute resolution can be achieved through litigation and non-litigation, non-litigation settlement is carried out in institutions established by law and settlement can be achieved through arbitration. The Consumer Dispute Resolution Agency (BPSK) is one of the institutions that can handle and resolve consumer disputes.

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

### A. INTRODUCTION

In the modern era, of all sectors, both economic and technological, which not only occur in developed countries but also occur in almost all corners of the world, the economy is experiencing the fastest development. Considering that Indonesia is a country with a large population, of course the population is one of the main indicators of rapid economic progress. The increasingly rapid development and development of the national economy has produced verified goods or services that can be consumed by the public. Advances in science, communication technology and information technology also support the expansion of space for transactions of goods or services to cross the territorial boundaries of a country. On the one hand, this condition is very beneficial for the interests of consumers because the need for the desired goods and/or services can be fulfilled and there is greater freedom to choose various types of quality goods or services according to their needs. On the other hand, these conditions and phenomena can cause the position of business actors and consumers to become unbalanced, where consumers tend to be used as objects of business activities by business actors to reap maximum profits through advertising or promotions. The method of sales, as well as the application of standard agreements, can be detrimental to consumers. Meanwhile, low awareness of consumer rights and obligations due to a lack of consumer education and knowledge has become a problem point for the behavior of business actors.

The main factor that causes consumer weakness is the low level of consumer awareness of their rights. This is caused by low consumer knowledge. Therefore, the presence of Law Number 8 of 1999 concerning Consumer Protection is intended as a strong legal basis for the government to protect consumer interests. The importance of consumer rights has given rise to the idea that consumer rights are the "fourth generation of human rights", which is a key word in the conception of human rights in future developments. Supported by

political and economic developments in Indonesia, efforts to protect and empower consumers were realized with the birth of Law Number 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK) which was ratified by the President of the Republic of Indonesia on April 20 1999 and became effective for one year. then, to be precise, April 20 2000. The Consumer Protection Law (UUPK) states that to improve the dignity of consumers, there is a need for consumer awareness, knowledge, concern, ability and independence in protecting themselves and developing the attitude of responsible business actors. With the existence of legislative regulations, it is hoped that a balance of protection of interests between consumers and business actors will be realized. In resolving consumer disputes, there are various alternative dispute resolutions. Broadly speaking, it can be divided into two types of settlement, namely the first is the Litigation settlement model, namely dispute resolution carried out by the parties through judicial institutions (in court dispute settlement). The two non-litigation settlement models are dispute resolution carried out outside of court (out of court dispute settlement). Each dispute resolution model has different characters and consequences.

The UUPK states that out-of-court consumer dispute resolution is carried out to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that the loss received by the consumer will not happen again or will not happen again. Resolving disputes outside of court only takes a short time, is fast, accurate and final, and the privacy of the parties involved is maintained. Using non-litigation methods to resolve disputes between consumers and business actors is the most appropriate choice. In contrast to the litigation method, it requires greater costs, relatively longer time, and complicated stages leading to a final decision that is win or lose. As a result, it creates new problems because it is deemed not to accommodate and embrace common interests. There are several shortcomings in resolving disputes through court, so the parties choose to resolve disputes through non-litigation channels. In Article 1 point 1 of Law Number 30 of 1999 it is stated, "Arbitration is a method of resolving a dispute outside the general court based on an arbitration agreement made in writing by the parties to the dispute." From the meaning of Article 1 point 1, the basis of arbitration is an agreement between the parties themselves, which is carried out based on the principle of freedom of contract. This is in accordance with the provisions in Article 1338 of the Civil Code, which states that the parties' agreement is binding as law.

In resolving disputes through arbitration, both temporary (ad-hoc) arbitration and permanent bodies (institutions) are practices that have long been known in the world of commerce. The most important reason why parties choose arbitration over court is because of the skills and expertise of the arbitrators, especially in cases that require special technical knowledge. Another reason business actors choose settlement through arbitration is that the case examination process is carried out in secret, so that it is not known to the public. The benefit of resolving disputes through arbitration when compared to resolving through court is that dispute resolution guarantees the confidentiality of the dispute between the parties so that it will not be known by other parties. This condition will maintain the relationship between the two parties after dispute resolution, and it can avoid taking a long time to resolve disputes due to procedural and administrative factors such as those that occur when resolving disputes through the courts. Law Number 8 of 1999 established an institution in consumer protection law, namely the Consumer Dispute Resolution Agency (BPSK). Article 1 number 11 UUPK states that BPSK is a body tasked with handling and resolving disputes between business actors and consumers. BPSK was actually formed to resolve small scale and simple consumer dispute cases.

Furthermore, in Article 1 paragraph 12 UUPK, BPSK is the body tasked with handling and resolving disputes between business actors and consumers. Besides being tasked

with resolving consumer disputes, BPSK is also tasked with providing consumer protection consultations.

There are several factors behind consumers choosing to resolve disputes at the Consumer Dispute Resolution Agency (BPSK), including:

1. The Consumer Dispute Resolution Agency (BPSK) is very helpful to consumers, especially in terms of easy, fast, cost-free procedural procedures, because all costs incurred have been charged to the Regional Revenue and Expenditure Budget (APBD) of each Regency and City, in accordance with the mandate of the Law. Law Number 8 of 1999 concerning Consumer Protection. The settlement procedure is not complicated, does not use rigid legal arguments;
2. Consumers or plaintiffs can file a written lawsuit regarding violations of consumer protection, so that consumer dispute resolution through BPSK does not require the agreement of both parties to choose BPSK as a dispute resolution forum.

An example of a consumer dispute case is in Decision Number 148/Pts.ARB/BPSK-BB/XII/2017. In this case the consumer is the plaintiff and PT. Adira Dinamika Multifinance as defendant. Consumers are customers of PT. Adira Dinamika Multifinance based on Agreement No. PK 0603.1620.0008 which is stated on the CCV (Customer Card View) and the Financing agreement which is stated in the power of attorney to charge collateral. Consumers fulfill their obligations by paying eight credit installments and due to experiencing arrears due to economic difficulties, payments occur in arrears. The company carried out forced withdrawals and threatened consumers. From this incident, the consumer filed a lawsuit against the business actor through BPSK and from this lawsuit, BPSK followed up on the consumer's lawsuit and summoned the business actor. The initial settlement was carried out through mediation between the two parties, but nothing resulted in a conciliatory decision, then both parties agreed to settle through arbitration. From the description above, the author draws the title, namely, "Arbitration as an Alternative for Consumer Dispute Resolution Through an Arbitration Clause Based on Decision Number: 148/Pts.ARB/BPSK-BB/XII/2017".

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

From the background description above, the problem formulation that will be discussed is:

- 1) What is the process for resolving consumer disputes in Decision Number 148/Pts.ARB/BPSK-BB/XII/2017?
- 2) How Effective is the Implementation of Consumer Dispute Decision Number 148/Pts.ARB/BPSK-BB/XII/2017?

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

This paper uses normative legal research methods because the focus of the study departs from conflict of norms, using a statute approach, for similarity or harmony between one law and another law, namely Law Number 8 of 1999 concerning Consumer Protection and Laws. Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The technique for searching legal materials uses library study techniques, as well as analyzing studies using qualitative analysis, by interpreting legal materials with the aim of interpreting the law. Are there void norms, noma conflicts or vague norms in legal materials, especially primary legal materials?

#### **D. DISCUSSION**

##### **1. Consumer Dispute Resolution Process in Decision Number 148/Pts.ARB/BPSK-BB/XII/2017**

The government formed a body, namely the Consumer Dispute Resolution Agency (BPSK), to resolve consumer disputes outside of court. With BPSK, consumer dispute resolution can be done quickly, easily and cheaply. It's fast because it is explained in Article 55 of the UUPK that within a grace period of 21 working days BPSK is obliged to give its decision. Easy because the administrative procedures and decision-making procedures are very simple, cheap because the court costs are affordable. Any consumer who feels disadvantaged by a business actor can complain about their dispute through BPSK, either directly, represented by their attorney or the heir concerned. Complaints submitted by their attorney or heir can only be made if the consumer concerned is sick, has died, is not an adult or is elderly. The complaint can be submitted orally or in writing to the BPSK secretary in the City/Regency where the consumer is domiciled or in the City/Regency closest to the consumer's domicile. Article 47 UUPK explains, Consumer dispute resolution at BPSK is carried out to reach an agreement regarding the form and amount of compensation for losses or regarding certain actions to ensure that losses suffered by consumers will not happen again.

The size of the material losses experienced by consumers is based on what the consumer experiences and the magnitude of the impact of using the product or service on the consumer. The form of guarantee in question is in the form of a written statement explaining that the action that has harmed the consumer will not be repeated. In principle, consumer dispute resolution is sought to be carried out peacefully, so that it can be carried out by the parties to the dispute. Procedures for resolving consumer disputes by BPSK are regulated in Law Number 8 of 1999 concerning Consumer Protection in conjunction with Minister of Industry and Trade Decree Number 350/MM/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency. The settlement process is set to be very simple and as far as possible a formal atmosphere is avoided.

Article 45 Paragraph 4 UUPK determines that if an effort has been chosen to resolve a consumer dispute outside of court, a lawsuit through court can only be pursued if the effort is declared unsuccessful by one of the parties or the parties to the dispute. Article 15 Paragraphs 2 and 3 of Minister of Industry and Trade Decree Number 350/MPP/12/2001 explains that consumers who have been harmed can submit a request for consumer dispute resolution to the BPSK closest to the consumer's residence. The request can be made by the consumer himself or his attorney or the heir concerned if the consumer has died, is sick or is elderly so he cannot submit his own complaint, either in writing or orally, in accordance with the provisions of the laws that apply to foreigners or nationals. foreign. There is a consumer dispute with Number 148/Pts.ARB/BPSK-BB/XII/2017, the application is submitted in writing to the BPSK secretariat, a receipt BPSK will provide the receipt to the applicant, and if the application is submitted orally, the BPSK secretariat will note the application is specific, and affixed with the date and registration number. If the application turns out to be incomplete (not in accordance with Article 16 of Minister of Industry and Trade Decree No. 3050/MPP/Kep/12/2001) or the applicant does not fall within the authority of BPSK, then the BPSK chairman rejects the application.

For the purposes of summoning business actors, a summons is issued which contains the day, date, time and place of the trial and the business actor is obliged to provide answers to the resolution of consumer disputes submitted at the first trial. On the specified day the business actor is not present to respond to the summons, before 3 working days have passed since the complaint, the business actor can be summoned once

again, and if the business actor still does not attend the hearing without a valid reason, then based on the provisions of Article 52 letter I of the Protection Law Consumers Jo Article 3 letter I Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001, BPSK can request assistance from investigators to bring in the business actor.

**a. Consumer Dispute Resolution Procedures Through Arbitration**

In the arbitration hearing examination process, the principle is that the examination is carried out in a "closed manner" at each stage. Starting from examining statements of claim, statements of defense, documents, witnesses and experts as well as oral hearings with the parties. Likewise local inspections, everything is carried out behind closed doors. In Law Number 30 of 1999, examinations of disputed cases are carried out behind closed doors and use Indonesian. Each party to a dispute has the same right to express their respective opinions. Either directly or represented by law. In Article 27 and Article 28 it is stated that: "all examinations of disputes by the arbitrator or arbitration panel are carried out behind closed doors".

Dispute resolution through arbitration as regulated in Article 34 of Law Number 30 of 1999 concerning Arbitration can be carried out using arbitration institutions, national or international based on the agreement of the parties and carried out according to the regulations and procedures of the chosen institution, unless otherwise determined by the parties.

The procedure for resolving consumer disputes outside of court through arbitration is based on Consumer Dispute Decision Number 148/Pts.ARB/BPSK-BB/XII/2017, the implementation is different from conciliation or mediation, through this method the panel acts actively to reconcile the disputing parties if there is no an agreement was reached.

The procedures or procedures for resolving disputes through arbitration are regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Articles 27 to Article 48. The principles or principles of resolving disputes through arbitration include the following matters:

- 1) All dispute examinations are carried out behind closed doors;
- 2) The language used is Indonesian, unless with the agreement of the arbitrator or arbitration panel the parties may choose another language to be used;
- 3) The parties to a dispute have the right to the same opportunity to express their respective opinions;
- 4) The parties to the dispute can be represented by their attorney with a special power of attorney;
- 5) Third parties outside the arbitration agreement can participate and join in the dispute resolution process through arbitration provided that there is an element of interest involved, their participation is agreed upon by the parties to the dispute, and approved by the arbitrator or arbitration panel;
- 6) All disputes and their resolution are submitted to the arbitrator or arbitration panel and will be examined and decided in accordance with the provisions of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution;
- 7) All disputes and their resolution are submitted to the arbitrator or arbitration panel and will be examined and decided in accordance with the provisions of the Law;
- 8) At the request of one of the parties to the arbitrator or arbitration panel in making a provisional panel decision or other decision to regulate the orderliness of the examination of the dispute including the determination of confiscation of

collateral ordering the safekeeping of goods to a third party, or selling goods that are quickly damaged;

- 9) The arbitrator or arbitration panel may order that each document or evidence be accompanied by a translation in the language determined by the arbitrator or arbitration panel.

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 on resolving disputes fall entirely under the authority of the BPSK assembly. The arbitration settlement process at BPSK based on Number 148/Pts.ARB/BPSK-BB/XII/2017 is quite simple. Consumers come to BPSK and then BPSK secretarial officers will serve consumers who want to complain about their problems. The officer will give the consumer a complaint form to be filled in by the consumer. Complaints can be made in writing or verbally.

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

- 1) Full name and address of consumer, heir or proxy accompanied by proof of identity;
- 2) Full name and address of business actor;
- 3) The goods or services complained of;
- 4) Proof of acquisition (bonds, invoices, receipts and other proof documents);
- 5) Information on the exact location, time and date when the goods or services were obtained;
- 6) Witnesses who know that the goods or services were obtained;
- 7) Photos of goods and service implementation activities if any.

Applications for consumer dispute resolution that are made in writing are then received 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 secretariat officers will summon the parties to the dispute to meet in court. From the trial, the next steps can be determined whether consumers and business actors can still be reconciled or whether they must take the settlement steps that have been determined, in this case arbitration. The Chairman of BPSK summons business actors no later than 3 (three) days after the application for dispute resolution is received correctly and completely as specified in Article 16 of Minister of Industry and Trade Decree Number 350 of 2001. The summons clearly states the day, date, time and place. trial and the obligation of business actors to provide a letter of response to consumer dispute resolution and submit it on the day of the first trial. Before the trial there is a stage called pre-trial. This pre-trial is not regulated in Law Number 8 of 1999 concerning Consumer Protection or Minister of Trade and Trade Decree Number 350 of 2001. The initial summons made to business actors is a summons to the parties in the dispute to attend the pre-trial. This pre-trial is a stage to bring together the parties to the dispute to determine the method of dispute resolution that will be used and the appointment of a panel.

The Chairman of BPSK has its own policy that hearings on consumer disputes submitted by consumers will continue. Because if not, the arbitration hearing will not take place, because basically business actors will feel that they have no obligation to carry out consumer dispute resolution through arbitration and the principle of legal certainty in the Consumer Protection Law will not be realized. The BPSK chairman's policy certainly has a legal basis, namely Article 43 paragraph (1) of Minister of Industry and Trade Decree Number 350 of 2001 states "technical provisions and trial procedures which are not sufficiently regulated in this decision are further regulated by the BPSK

Chairman". The first trial process is carried out no later than the 7th (seventh) working day from the receipt of the request for consumer dispute resolution by BPSK, but in practice it does not work like that, the first trial is carried out no later than 7 (seven) working days after the requirements are met. At the first trial, before the business actor provides an answer, the consumer can withdraw the lawsuit by making a statement. If the lawsuit is withdrawn, the tribunal is obliged to announce that the lawsuit is withdrawn. If in the process of resolving consumer disputes there is peace between consumers and business actors in dispute, the panel is obliged to make a decision in the form of peace. If business actors or consumers are not present on trial day I (First), then based on Minister of Industry and Trade Decree Number 350 of 2001 Article 36 the panel gives consumers and business actors a final opportunity to attend trial II (Second) bringing the necessary evidence. Trial II (Second) shall be conducted no later than 5 working days from the day of trial I (First). If at trial II (Second) the consumer is not present, then the lawsuit is null and void, conversely if the business actor is not present, then the consumer's lawsuit is granted without the presence of the business actor (Verstek Decision).

## **2. Effectiveness of Implementation of Consumer Dispute Decision Number 148/Pts.ARB/BPSK-BB/XII/2017**

BPSK is part of the government's efforts to improve the welfare of society in terms of realizing equal distribution of justice, especially for consumers who feel losses from business actors/producers, because disputes between consumers and business actors/producers are usually small in nominal value so it is impossible to submit the dispute in the District Court because the cost of the case is not proportional to the amount of loss that will be claimed. The formation of BPSK was based on the tendency of the public to be reluctant to take proceedings in the District Court because the position of consumers was socially and financially unequal to that of business actors. With the establishment of the BPSK institution, consumer dispute resolution can be done quickly, easily and cheaply. It is fast because dispute resolution through BPSK must be resolved within a grace period of 21 working days, and there is no possibility of an appeal which could prolong the case resolution process. It is easy because the administrative procedures and decision-making process are very simple, and can be carried out by the parties themselves without the need for legal counsel. It's cheap because the court fees charged are very low and affordable for consumers. If the BPSK decision is accepted by both parties, the BPSK decision is final and binding, so it does not need to be submitted to court. Thus, the creation of fast, easy and cheap consumer dispute resolution is a benchmark for achieving the objectives of the formation of BPSK.

Based on Article 54 paragraph (3) of the Consumer Protection Law, BPSK decisions as a result of resolving consumer disputes through conciliation, mediation or arbitration are final and binding. The definition of final means that the resolution of the dispute has been completed and ended, while the word binding contains the meaning of forcing and as something that must be carried out by the party who is obliged to do so. Article 56 Paragraph (2) of the Consumer Protection Law states that if a consumer or business actor rejects a BPSK decision, they can submit an objection to the District Court no later than 14 working days after receiving notification of the decision. The possibility of rejecting the BPSK decision and submitting an objection to the District Court will extend the time for resolving consumer disputes as well as increase the burden of case costs that must be borne by the parties. Business actors who have a higher bargaining position do not experience difficulties regarding financing because they have financial strength, but the case is different for consumers. Thus, consumer dispute resolution becomes ineffective because the hope of the formation of BPSK to be able to provide a fast, easy (simple) and cheap consumer dispute resolution process is difficult to achieve.

So the effectiveness of implementing BPSK decisions in resolving consumer disputes is doubtful.

From this, in general the implementation of the BPSK decision regarding consumer disputes Number 148/Pts.ARB/BPSK-BB/XII/ 2017 has been effective, but there are still things that make the implementation of this decision less effective because the BPSK does not have the authority to force the parties involved. dispute to implement the decision made by BPSK. The role of BPSK is limited to providing decisions and there is no authority to force disputing parties to implement BPSK decisions, especially decisions made through conciliation and mediation. Meanwhile, for arbitration decisions, BPSK is also unable to force the disputing parties to implement the decisions made by BPSK, but the results of the arbitration decisions can be requested for ratification from the District Court and then the execution will be carried out by the District Court with a decision on execution based on the provisions of Article 57 of the Consumer Protection Law.

#### E. Closing

1. Dispute resolution through arbitration as regulated in Article 34 of Law Number 30 of 1999 concerning Arbitration can be carried out using national or international arbitration institutions based on agreement between the parties, and carried out according to the regulations and procedures of the chosen institution, unless otherwise determined by the parties. Procedures or procedures for resolving disputes through arbitration are regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Articles 27 to Article 48.
2. Regulations regarding BPSK can be said to be still lacking, resulting in a less effective role of BPSK in resolving consumer disputes in Indonesia. In the consumer protection law, BPSK decisions are declared to have final and binding legal force.

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