
Rehabilitating Indonesia Consumer Dispute Settlement in Effective Ways

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ABSTRACT

According to the National Legislation Programme 2015-2019, the Consumer Protection Act is ranked 92 out of 189 draft bills to be reviewed and approved during the presidential election in mid-2019. A year later, there has not been any updated version of the amendment. The enforcement of consumer protection is facing certain problems and challenges, especially in handling any consumer disputes. Hence, it is necessary for the Government to prioritize the act to adjust the obstacles. The author uses normative juridical research methods in compiling this research. This article will compare Indonesian's enforcement system to Australia. In the end, it is hoped that this paper shall serve as a guide for the Indonesian government in determining aspects that need to be addressed in the Consumer Protection Law and its enforcement. BPKN should be allowed to have the same level of authority as ACCC or ASIC. First, Enhance BPKN's advisory function through improved monitoring of complaints data and follow-up recommendations. Second, increase budgetary to assert its role and mandate. Lastly, add mandate for settlement of high-impact consumer disputes.

Keywords: Consumer Protection Law, Indonesia, Australia

INTISARI

Menurut Program Legislasi Nasional 2015-2019, Undang-Undang Perlindungan Konsumen berada di peringkat 92 dari 189 RUU yang akan ditinjau dan disetujui pada pemilihan presiden pertengahan 2019. Setahun kemudian, belum ada versi terbaru dari amandemen tersebut. Penegakan perlindungan konsumen menghadapi masalah dan tantangan tertentu, terutama dalam upaya penanganan sengketa konsumen. Oleh karena itu, pemerintah perlu memprioritaskan tindakan untuk mengatasi hambatan tersebut. Penulis menggunakan metode penelitian yuridis normative dalam menyusun penelitian ini. Artikel ini akan membandingkan sistem penegakan hukum Indonesia dengan Australia. Pada akhirnya, tulisan ini diharapkan dapat menjadi pedoman bagi pemerintah Indonesia dalam menentukan aspek yang perlu dibenahi dalam Undang-Undang Perlindungan Konsumen dan penegakannya. Pertama, fungsi penasihat Peningkatan BPKN melalui peningkatan pemantauan data keluhan dan rekomendasi tindak lanjut. Kedua, tingkatkan anggaran untuk menegaskan perannya dan mandat. Terakhir, tambahkan mandat untuk penyelesaian perselisihan konsumen berdampak tinggi.

Kata kunci: Hukum Perlindungan Konsumen, Indonesia, Australia

INTRODUCTION

Businesses and consumers' relationship is based on interdependence where ideally each party is guaranteed with an equivalent position. However, in reality, consumers are often faced with the opposite. Businesses are in a favor of being the upper hand in this situation from having a more superior capital authority. Standard contracts are applied to every product or service provided which causes consumers' bargaining position to vanish. Meanwhile, an agreement is supposed to be constructed based on negotiations between parties involved but with the existence of standard contracts, the contents have been determined unilaterally by companies.¹ Consumers are left with limited options since standard contracts are considered as a form of freedom of contract. In other words, businesses are legally allowed to carry out the unilaterally written contract. Therefore, it is fundamental to safeguard consumers' rights by composing a Consumer Protection Law.

Indonesia has a longstanding history of consumer protection. The desire to realize the Consumer Protection Law has been around since the 1980s. The effort was finally accomplished with the issuance of Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as "Law No. 8/1999") to protect consumers' rights against producers or suppliers of goods and services.² Before the existence of this law, consumers are insufficiently supported by the Civil Code, the Criminal Code, and several other regulations. Many people conjectured the law has failed in facilitating consumers' needs and is more beneficial for businesses.³

Aside from the regulations, consumers' protection ultimately won't be effective unless enforcement has taken place. Ultimately institutions play an important role in responding, handling, and documenting all sorts of issues or claims reported by consumers.⁴ Law No. 8/1999 stipulates three legitimate institutions, the National Agency for Consumers' Protection (hereinafter referred to as "BPKN"), The Directorate General of Consumer Protection and Trade Compliance (hereinafter referred to as "LPKSM"), and the National Agency for Settlement of Consumers' Dispute (hereinafter referred to as "BPSK"), to authorize related issues. However, these constitutional institutions have yet to succeed in prioritizing consumers' needs. Difficulties arise as the policies, laws, and regulations developed by the various entities in charge overlap, show inconsistent or divergences, varying per their scope of application and/or interpretation. Alas, the government still has an agenda in ensuring consumer protection.

¹ Suwandono, Agus and Dajaan, Susilawati S (2015). *Hukum Perlindungan Konsumen*. In: *Ruang Lingkup Hukum Perlindungan Konsumen*. Universitas Terbuka, Jakarta, p. 14.

² Hamzah (2017). *Comparative Study on Consumer Protection in Indonesia through Mechanism of Product Liability Insurance*. *European Research Studies Journal*: Volume XX, Issue 3A, p. 707.

³ *loc. cit.*, p. 709

⁴ Shofie, Yusuf (2013). *Optimalisasi Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Penyelesaian Sengketa Pembiayaan Konsumen di Tengah Terjadinya Disharmonisasi Pengaturan*. *ADIL: Jurnal Hukum* Vol. 4 No. 1, p. 55.

On the contrary, Australia has a slightly different approach to guarantee consumers' rights. The Australian consumer law includes sundry considerations and possibilities such as civil pecuniary penalties, infringement notices allowing for minor infringements to be dealt with through the payment of small sums, disqualification orders, public warning notices, substantiation notices, and consumer redress orders which allows non-party consumers to obtain redress for breaches of the law. The organization responsible is known as The Australian Competition and Consumer Commission ("ACCC") and The Australian Securities and Investment Commission ("ASIC"). Later on, the dispute settlement can occur through ombudsmen, tribunals, and court by implementing an informal, fast, and low-cost procedure.

Das sollen is a law that is aspire to be as a legal fact expressed by law experts in the theoretical level (law in the books). Meanwhile, the turn signal is law as a fact (reality) that is developed and processed in the community (law in action). *Das sollen* and turn signal is useful in legal discoveries, namely as the process of forming a law by a judge or other legal officer who is given the task of carrying out the law against the correct events. Where in legal discoveries, a concretization is needed, crystallization, and individualization of a law regulation (*das sollen*) with events that occur (*das turn*). It is necessary to rule a legal rule to a concrete event is important because the need for a relationship or relationship that includes between concrete events and legal regulations.

The issue circulates around how in the meantime, BPSK is not being optimized since Law No. 8/1999 is too rigid and instead it restrains BPSK from carrying out its objective. Consumers are starting to realize that the government focuses more on facilitating businesses rather than protecting them. This is shown from how the government is not prioritizing the development of BPSK throughout Indonesia. This gives consumers limited access to file complaints and pursue their rights. Aside from the arising issues, the existence of BPSK is still necessary. Confidently by analysing Australia's consumer protection enforcement system, Indonesia can find the answer to improve the current system⁵.

METHODS

The Author is using normative juridical research methodology in pursuing this research. Some measures such as the study of law principles, systematic study of law, research on the level of synchronization of law, research of legal history, and comparative law research are taken to conduct an analytical comparison between the laws applicable in Indonesia and Australia.

In pursuance to obtain accurate information to conduct this paper, the study of literature which includes mostly law journals, law books, and case studies, as well as the study of Indonesian

⁵ Kurniawan. 'Perbandingan Penyelesaian Sengketa Konsumen di Indonesia dengan Negara Negara Common Law System.' *Jurnal Hukum dan Pembangunan Tahun ke-43: No.2* (April-June 2013).

domestic law and regulations along with analyzing Australian law and how it is being enforced. A comparative approach is applied which focuses on an analytical method that examines the differences between these two legal systems. In this paper, Australia is chosen as a representative of the common law system, meanwhile Indonesia is representing the civil law system.

RESULTS AND DISCUSSION

The result and discussion section serves as the focal point and the most important section of the manuscript. Analysis and results of the research should be presented in a clear, direct and concise manner, whereas it should highlight the scientific findings rather than expanding in great detail. Attention should also be paid to the differences between the author's results or findings in contrast with other research or publications that have been published by other authors. The novelty nature and state of the art of the manuscript that have been discussed in the introduction may be further elaborated.

1. Legal Framework on Consumer Protection in Indonesia

Prior to the existence of Law No. 8/1999, Indonesia faced several cases that put consumers' health and safety at risk. In the year 1989, a biscuit-selling company, Gabisco, is found guilty of poisoning its customers which resulted in 106 surviving victims and 35 deaths across the country.⁶ This was due to the substance, *ammonium bicarbonate*, being swapped with *sodium nitrite* during the transfer process. In the end, the employees of the company are sentenced to six months in prison based on Article 205 paragraph 1 of the Indonesian Criminal Law Code. Meanwhile, Minister of Politics, Law, and Security at the time donated several amounts of money to the consumers as a form of sympathy⁷.

A similar case repeated itself five years later which brought 28 lives at stake while another five deaths occurred.⁸ The company at guilt sold poisoned noodles and still managed to not provide any compensation to the victims, although eventually, the victims received a certain extent of indemnity initiated by the minister. The dispute ended with product withdrawal and the responsible company was still not being punished for the misconduct.

The alarming cases of abused consumers evoked the development of a Consumer Protection Law. Additionally, Inosentius Samsul proclaim the formation of the laws is also provoked by the development of the global trade system as discovered in the framework of the World Trade Organization ("WTO"), as well as the International Monetary Fund ("IMF") program, and the

⁶ Shofie, Yusuf (2008, October 15). *Kapita Selektta Hukum Perlindungan Konsumen di Indonesia*. Citra Aditya Bakti: Bandung, p. 361.

⁷ Kurniawan. 'Perbandingan Penyelesaian Sengketa Konsumen di Indonesia dengan Negara-Negara Common Law System.' *Jurnal Hukum dan Pembangunan Tahun ke-43: No.2* (April-June 2013).

⁸ *Ibid.*

World Bank Program.⁹ Indonesia's decision to ratify the world trade agreement was later followed by a drive for the government to harmonize national law with international trade law.¹⁰ Thus since 20 April 1999, Indonesia has successfully established Law No. 8/1999 which integrates laws and regulations relating to consumer protection in Indonesia.

Article 1 of Law No. 8/1999 defines consumer protection as all efforts that guarantee legal certainty to ensure consumers' protection. Legal protection is basically a fulfillment of consumer rights that should be provided to consumers. Therefore, consumer protection is actually synonymous with the legal protection of consumers protection.¹¹

The subjects regulated in Law No. 8/1999 is obligated to follow certain criteria set. Namely, the criteria of consumers protected by the law are final consumers and not intermediate consumers. This is according to the definition of consumers laid out in Article 1 number (2) which states that the consumer is every user of goods and/or services available in the community, both for the benefit of himself, his family, others, and other living things and is not used for trade.

Moreover, Article 1 number (3) of Law No. 8/1999 determines the criteria of business actors as every individual or business entity, whether in the form of a legal or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both individual and jointly organize business activities in various fields of economics. Business actors referred to in Law No. 8/1999 include companies, corporations, state-owned enterprises, cooperatives, importers, traders, distributors, etc.

The scope of consumer protection in Law No.8/1999 covers a broad protection, for instance protection against the use of goods and/or services. Article 1 number (4) states that goods are every object both tangible and intangible, both movable, deflectable or non-spent, which can be traded, used, or utilized by consumers. Meanwhile the definition of services as stated on Article 1 number (5) is any service in the form of work or achievement provided to the public for the benefit of consumers.

Each effort contrived to provide legal certainty in providing consumer protection shows that it is not only oriented to the issue of compensation or the imposition of sanctions on business actors. Efforts to protect consumers are also directed towards empowering consumers and raising business actors' awareness of the importance of consumer protection. Furthermore, efforts to protect consumers are not merely fixated on a legal field, but also involving other legal aspects such as civil law, administrative law, and criminal law.

⁹ Samsul, Inosentius (2004). *Perlindungan Konsumen: Kemungkinan Penerapan Tanggung Jawab Mutlak*. Jakarta: Program Pascasarjana Universitas Indonesia.

¹⁰ Suwandono, Agus and Dajaan, Susilawati S (2015). *Hukum Perlindungan Konsumen*. In: *Ruang Lingkup Hukum Perlindungan Konsumen*. Universitas Terbuka, Jakarta, p. 12.

¹¹ Shidarta (2006). *Hukum Perlindungan Konsumen Indonesia*. Jakarta: Grasindo.

The Indonesian Civil Code does not specifically mention the term consumer, however the provisions in the Civil Code also regulate the relationship between business actors.¹² The aspect related to consumer protection law is contained in Book III of the Civil Code on Engagement, which discussed the legal aspects of the agreement and the act against the law. In addition, the Commercial Code also alluded consumer protection in the field of transportation, insurance, etc.

2. Problems and Challenges on Enforcing Consumer Law within the Indonesian Legal Framework

The Ministry of Trade and the parliament, supported by Law No. 8/1999, has managed to establish several organizations to enforce the applied law. Article 33 of the law created BPKN (Badan Perlindungan Konsumen Nasional) to “...provide suggestions and considerations to the government in the framework of developing consumers’ protection in Indonesia.”¹³ This independent authority is obliged to provide recommendations to the government on consumer protection, conduct surveys and studies, as well as encouraging the development of NGOs (LPKSM), among others.¹⁴ Researches resulted by BPKN will later be used as recommendations which can be addressed at various members of government such as ministries, sector regulators, and even the president.¹⁵ Up to this time, there are 30 out of 161 recommendations formulated and implemented since 2006. In addition to that, BPKN has also provided a hotline that can receive consumer complaints. Those complaints will be used as a guideline to define policy priorities. A gradual increase in the number of consumer complaints submitted to BPKN is seen from only 28 in 2015 to 241 by June 2018.

LPKSM (Lembaga Perlindungan Konsumen Swadaya Masyarakat), a non-governmental consumer foundation, is in charge of implementing general consumer policies in Indonesia and

¹² Suwandono, Agus and Dajaan, Susilawati S (2015). Hukum Perlindungan Konsumen. In: Ruang Lingkup Hukum Perlindungan Konsumen. Universitas Terbuka, Jakarta, p. 14.

¹³ UNCTAD (2019). Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia, p. 16.

¹⁴ Article 34 of Law No. 8/1999:

“(1) To carry out the functions formed to in Article 33, BPKN has a duty:

- a. provide advice and recommendations to the government in the context of formulating policies in the consumer protection field;
- b. conduct research and assessment of the prevailing laws and regulations in the consumer protection field;
- c. carry out research on goods and/or services which concerns the safety of consumers;
- d. encourage the development of protection institutions to help consumers;
- e. disseminating information through media about consumer protection and promoting altitude alignments with consumers;
- f. receive complaints about consumer protection from the public, consumer protection agencies community self-help, or business actors;
- g. conduct surveys that involve needs consumer.”

¹⁵ UNCTAD (2019). Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia, p. 16.

enforcing Law No. 8/1999 in coordination with other related ministries in charge of sectoral consumer protection issues.¹⁶ Under Article 2 of the Government Regulation No. 58/2001, LPKSM is expected to be responsible for the implementation of consumer protection, thereby ensuring consumers and businesses to respect each other's rights and obligations. Since LPKSM is still within the scope of the Ministry of Trade, Article 3 of Regulation No. 58/2001 encompasses several provisions regarding the efforts and measures to be undertaken. Those provisions focus on managing healthy relations between businesses and consumers, developing consumer associations, along with improving human resources quality, research, and development in the field of consumer protection.

The Public Self-Independent Government Protection Agency, later called LPKSM is the registered Non-Government Institute and is recognized by the Government who has activities to handle consumer protection. The government is the Central Government, the Protinsi Government, and the City Government. The task from BPSK is to decide and define existence or absence of loss in the customer's side; notifying the decision to business actors who melakukan pelanggaran in the protection of consumers; impose administrative sanctions to the yang melanggar businesses provision of these laws.

Furthermore, the last layer within the consumer protection law enforcing institutions is BPSK (Badan Penyelesaian Sengketa Konsumen). It undertakes dispute settlement occurring between consumers and businesses out of court.¹⁷ Per Article 52 of Law No. 8/1999, BPSK consists of 9 to 15 representatives appointed by the local government which derived from the main stakeholder group, for example, three to five representatives each from the provincial or district government, civil society, and businesses associations.

Although BPSK is capable of issuing decisions in consumer disputes, the decisions need to be executed through courts. Article 54 number (3) of Law No. 8/1999 stated that the decisions adopted by BPSK are indeed final and binding, but in contrast, Article 57 set forth that its execution should be requested to the district court where the consumer is domiciled. In addition to that, several cases may not be considered "consumer disputes" by the Supreme Court if it contains immaterial loss, coercive payment, and prejudgment seizures.¹⁸ From May to October 2017 alone, the Supreme Court managed to annul 127 BPSK cases¹⁹

The possibility to appeal and cassation in the consumer dispute resolution process through BPSK implies inconsistencies, namely the inconsistency between the explanation of Article 54

¹⁶ Article 44 of Law No. 8/1999

¹⁷ Article 49 of Law No. 8/1999

¹⁸ UNCTAD (2019). *Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia*, p. 18.

¹⁹ Purwoko, A. Joko. 'Optimalisasi Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen di Luar Pengadilan.' Unisbank Semarang (28 July 2016).

paragraph (3)²⁰ and the statement in Article 57²¹ of Law No. 8/1999. As Gustav Radbruch stated that there are three basic legal values; justice, usefulness, and legal certainty. Each values are interconnected to each other and caused a tension from one another (*spannungsverhältnis*). The inconsistency regulated in Law No. 8/1999 regarding BPSK certainly lead to legal uncertainty. As a consequence, the legal uncertainty affects the value of justice and expediency, especially towards consumers.²² The value of expediency will give consumers a certain perspective to their utility on a certain matter. Therefore, consumer law plays a significant role for the community.

In addition to that, Friedman declared the legal system functions as “the settlement of dispute”, resolving disputes arising in the society. Pursuant to the previous statement, BPSK can be considered as a system of implementing the law.²³ Imperfections or an incomplete procedure will certainly interfere with the operation of the system as a whole. As a result, the expected legal objectives will not be achieved.

Nonetheless, the existence of BPSK cannot be pushed aside since the international benchmark of consumer protection, the UN Guidelines on Consumer Protection, urged Indonesia to maintain the existence of BPSK.²⁴ Historically, BPSK was originally designed as an alternative solution to consumer disputes out of court with mainly conciliation decisions, mediation decisions, and arbitrary decisions as the outcomes.²⁵ Objection towards the verdict is limited to only allowing

²⁰ Article 54 of Law No. 8/1999

²¹ Article 57 of Law No. 8/1999

²² Purwoko, A. Joko (2016, July 28). Optimalisasi Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen di Luar Pengadilan. Unisbank Semarang, p.6.

²³ *Ibid*, p. 10.

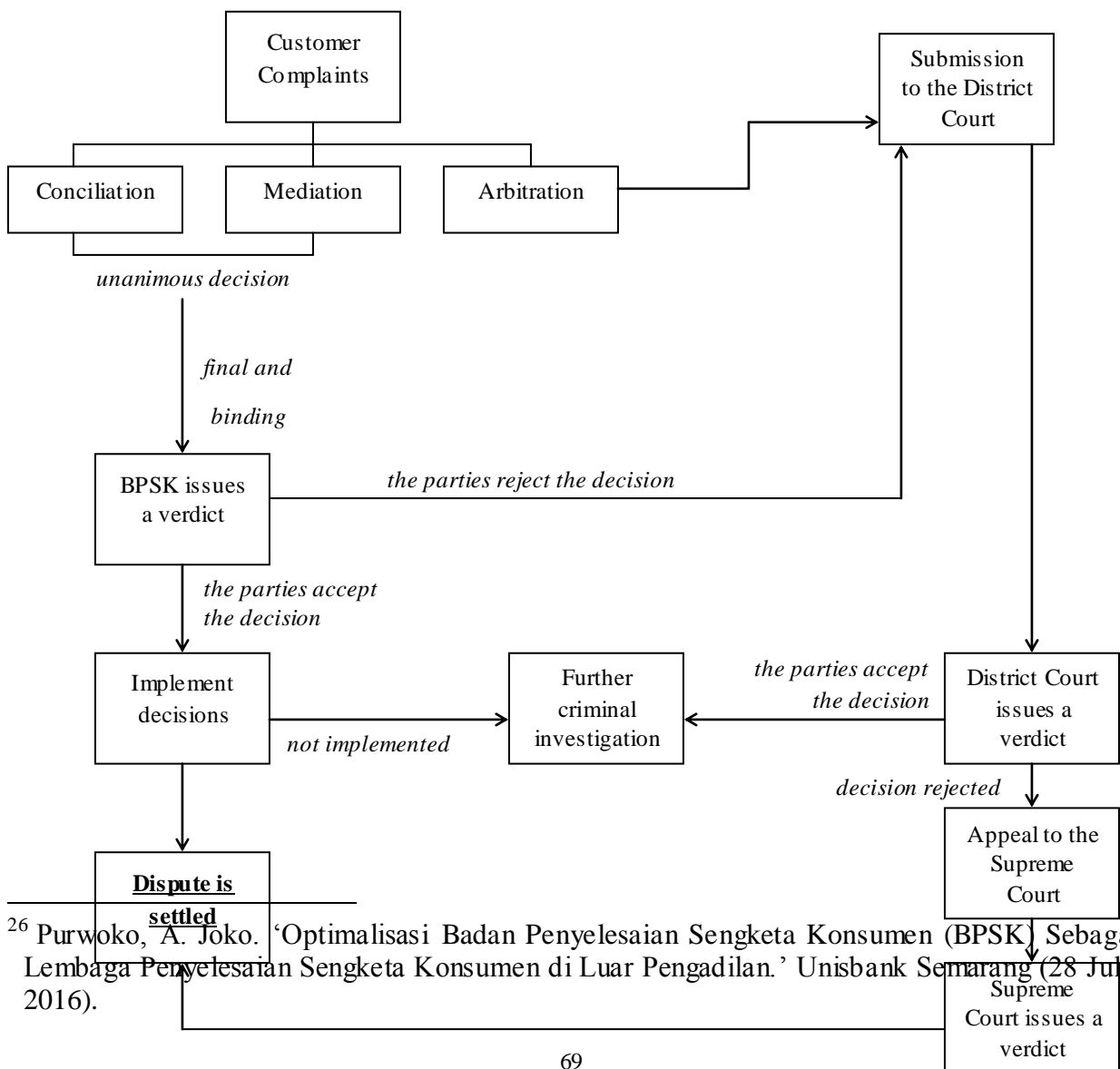
²⁴ UN Guidelines on Consumer Protection 16 April 1985 No. 39/248

1. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population.
2. Governments should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organization to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedures should take particular account of the needs of low-income consumers.
3. Governments should encourage all enterprises to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.
4. Governments should encourage consumer organizations and other interested groups, including media, to undertake education and information programs, particularly for the benefit of low-income consumer groups in rural and urban areas.

²⁵ Shofie, Yusuf (2013). Optimalisasi Peran Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Penyelesaian Sengketa Pembiayaan Konsumen di Tengah Terjadinya Disharmonisasi Pengaturan. ADIL: Jurnal Hukum Vol. 4 No. 1, p. 54.

arbitrary decisions. Later on, they are brought to the District Court in the relevant legal domain of BPSK or where the consumer is domiciled specifically.

Article 49 paragraph (1) of Law No. 8/1999 states that the Government is obligated to form BPSK in each region. A statement by Paul Bohanan affirmed that legal institutions are the essence of law. An institution is legal if it is used to settle dispute. Therefore, legal institutions can be concluded as the important pillars of the law itself, especially those with the authority to resolve disputes in society. The Law No. 8/1999 has mandated that the government should establish BPSK in every regions and cities around Indonesia. However, until now there are only 88 BPSKs throughout Indonesia. Whereas there are 415 districts and 93 cities in total. This means the government has only done 17% of its job to establish BPSKs in every regions and cities. It is unfortunate considering Law No. 8/1999 has been valid since 20 years ago. The government has failed to pursue the regulation’s main objective to ensure consumers protection. To simplify, the scheme of consumer dispute resolution through BPSK is displayed below²⁶.



²⁶ Purwoko, A. Joko. ‘Optimalisasi Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen di Luar Pengadilan.’ Unisbank Semarang (28 July 2016).

Figure 1. Scheme of BPSK Dispute Settlement
 Source: “Perbandingan Penyelesaian Sengketa Konsumen di Indonesia dengan Negara-Negara Common Law System” by

The problems culminated from the designated budgets. In practice, this is highly dependent on the respective regional government whereas BPSK's budgeting is included in the Regional Revenues and Expenditures Budget ("APBD"). Al Wisnubroto, a former member of the Yogyakarta BPSK claimed that solving consumer disputes is not a priority in the APBD and the Government seemed not to take the development of BPSK seriously.²⁷ The Governments are too fixated in pursuing and serving investors rather than ensuring consumer rights.

Furthermore, BPSK's movement is limited by the rigidity of Law No. 8/1999. Even some articles are found to contradict each other such as Article 54 paragraph (3) which states the BPSK decision as final and binding, whereas Article 57 provides options for parties to submit objections to the District Court and may even appeal to the Supreme Court. Not to mention, the provisions failed to decipher the coordination arrangements of various law enforcement agencies (LPKSM and BPKN), BPSK, the police, the prosecutors, and the courts.²⁸

Most of the BPSK members still adhere to legal-positivism, very rigid, and normative-narrow ways of interpreting the law.²⁹ Hart uses the term "regulatory scepticism" to emphasize that the rules applied must still be questioned. Therefore, law enforcement officials actually have the options to deviate from the initially obscure standards in resolving legal uncertainty, or in clarifying biased provisions. In resolving consumer disputes, usually consumers find themselves put into a weaker position than the businesses. Hence legal enforcement officials need to consider non-judicial aspects, i.e. economics, psychological, and cultural, to provide fair judgements. Namely, law acts as a facilitator of responses to social needs and aspirations. The purpose of the law may not always be visible but the important part is to interpret the meaning of the rules to fulfil the values and interests at stake³⁰.

3. Comparative Analysis of Consumer Protection Regulatory Framework in Indonesia and Australia

The common law countries have different approach in handling the consumer protection issue. Instead of forming a specialized institution like BPSK on settling consumer dispute, common law countries utilize a Small Claims Court or Small Claims Tribunal (depending on the country) which handles civil claims. Ralph Warner mentioned that the Small Claims Court is designed for civil lawsuit settlement and is limited to handle several claims regarding contract infringements, property damage, personal injury, breach of warranty, professional malpractice, injured by a

²⁷ Purwoko, A. Joko (2016, July 28). *Optimalisasi Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen di Luar Pengadilan*. Unisbank Semarang, p.419.

²⁸ *Ibid*, p. 420.

²⁹ *Ibid*, p. 415.

³⁰ United Nations Conference on Trade and Development. 'Voluntary Peer Review of Consumer Protection Law and Policy: Indonesia.' Geneva: May 2019.

defective product, as well as nuisance.³¹ Peculiarly, BPSK's establishment was inspired by the existence of Small Claims Court. This can be seen from the original objective of BPSK – to be an independent organization aimed to settle consumer disputes outside of the court.

Australia as a common law country utilized several tools in handling consumer disputes. Indonesia can use Australia's approach as a lesson to improve the consumer settlement system. In the current section of the article, the Author will point out how Australia regulates the consumer protection act and the procedure of the dispute settlement system. The differences between the two systems should not constraint one another but to be used as a method to revamp the national legislation.

1.1 The Substance and Enforcement of Australian Common Law

In Australia, competition and consumer protection used to be regulated under the Trade Practices Act 1974 along with the Australian Securities and Investments Commission Act 2001 as well as the Corporations Act 2001. However, in the meantime, the Australian Consumer Law has replaced the Trade Practices Act. It includes a suite of enforcement powers, penalties, and remedies for breaches of consumer laws. The new provisions introduces a new set of enforcement powers such as civil pecuniary penalties, infringement notices allowing for minor infringements to be dealt with through the payment of small sums, disqualification orders, public warning notices, substantiation notices, and consumer redress orders which allows non-party consumers to obtain redress for breaches of the law. As for the enforcement, the ACCC is providing a culture of compliance, by helping businesses understand the act and at the same time putting consumers as priority (Samuel; 2003).³² The ACCC targets systemic matters and takes a national approach to enforcement, compliance, and education. Similar to BPKN, it does not engage in individual dispute resolution, conciliation, or mediation. It rather engages internationally to pre-empt emerging issues.³³

Other than ACCC, Australia also has Australian Securities and Investment Commission ("ASIC"), which engages in the enforcement, compliance, and education of consumer issues in the financial system. Likewise, it is not responsible for handling any dispute settlements. Both regulators use a range of approaches and powers to encourage and enforce compliance with the ACL such as informing and educating consumers – particularly vulnerable and disadvantaged consumers – and businesses about their rights and obligations, undertaking

³¹ Warner, Ralph (March 2008). *Everybody's Guide to Small Claims Court*. USA: Berkeley, CA, NOLO, 12th Edition.

³² Chairman of ACCC during his speech to the Small Business Forum Parliament House in Canberra, 19 September 2003 regarding Competition Law, Fair Trading and Consumer Protection – Small Business and the Trade Practices Act.

³³ Australian Government Productivity Commission (March 2017). *Consumer Law Enforcement and Administration*, p. 46.

inspections to monitor businesses, handling consumer complaints and help resolve their disputes, and undertaking enforcement against non-compliant businesses. Under the ACL, both ACCC and ASIC are responsible for non-punitive orders to rectify harm and/or prevent further harm, injunctions, compensation orders, adverse publicity orders, disqualification orders, as well as civil pecuniary and criminal penalties.³⁴

In addition to enforcing the ACL, the ACCC is responsible for maintaining and promoting competition and regulation national infrastructure. Meanwhile, ASIC's more extensive responsibilities consisted of overseeing financial markets, managing company registration, and financial services providers licensing. The two regulators are frequently working cooperatively to evoke a national response to a consumer issue. Moreover, there is scope for flexibility for the regulators. For instance, the ACCC is able to take some action under ASIC Act if necessary and vice versa³⁵.

There are three other components which specifically undertake the dispute settlement field, which are the ombudsmen and other complaints bodies, the tribunals, along with the Courts. Ombudsmen are independent organisation that focuses on handling complaints and conducting investigation. They commonly facilitate dispute resolution between the parties and contribute in setting up policy discussions and consultations. However, they do not advocate for either side. There are two main types of ombudsmen – 'industry ombudsmen' and 'government ombudsmen'. Industry ombudsmen focuses on resolving disputes in particular industries i.e. energy and water, telecommunications, and financial services. Meanwhile the government ombudsmen seek to resolve complaints with government agencies. Hitherto, Ombudsmen and other complaints bodies has resolved close to 550,000 disputes in average, compared to around 1 million resolved by tribunals and courts together³⁶.

To obtain redress, consumers have to file a complaint through tribunals or courts. In 2014, there were 54 tribunals in Australia which collectively resolved up to 395,000 disputes each year. Civil tribunals provide informal, low cost, and timely avenues for resolving dispute in comparison with a formal court system. The decisions are legally binding and enforceable. On the other hand, tribunal are less formal and are mostly not bound by the legal rules of evidence. Legal representations are not usually allowed since tribunal often extensively use

³⁴ *loc. cit.*, p. 135

³⁵ Suwandono, Agus and Dajaan, Susilawati. 'Hukum Perlindungan Konsumen.' Ruang Lingkup Hukum Perlindungan Konsumen. Universitas Terbuka, Jakarta (2015).

³⁶ Suwandono, Agus and Dajaan, Susilawati. 'Hukum Perlindungan Konsumen.' Ruang Lingkup Hukum Perlindungan Konsumen. Universitas Terbuka, Jakarta (2015).

mediation and conciliation to reach dispute resolution. To simplify, the comparison of each tools is laid out below in this table³⁷.

Table 1. A Comparison of Ombudsmen, Tribunals, and Courts

No.	Factors	Ombudsmen	Tribunals	Courts
1.	Services	1. Receive and resolve complaints 2. Conduct investigation for cases	1. Administrative review 2. Civil dispute resolution 3. Binding decision	1. Judicial dispute resolution 2. Binding decisions 3. Some courts provide 'in house' alternative dispute resolution services
2.	Costs for disputant	No costs	1. Tribunal fees 2. Expert fees 3. Cost of attendance 4. (Lawyers' fees)	1. Court fees 2. Lawyers' fees 3. Counsel fees 4. Expert fees 5. Cost of attendance 6. Risk of adverse costs award
3.	Examples	ACL regulators (ACCC or ASIC)	Civil Administrative Tribunals	Magistrate Court, District, Supreme, Federal and Federal Circuit

Source: Australian Government Productivity Commission

1.2 Comparison of the Enforcement of Consumer Protection Act between Indonesia and Australia

After a thorough elaboration on each of the country's legal framework and how it is being enforced, a comparison to the enforcement process will be conducted in this sub-chapter. Both countries have a working system to settle consumer dispute. Indonesia has three institutions – BPKN, LPKSM, and BPSK. Meanwhile Australia has ACCC and ASIC at the national level. Although these institutions have the same objectives, they operate differently.

³⁷ United Nations Conference on Trade and Development. 'Voluntary Peer Review of the Consumer Protection Law and Policy of Indonesia: Overview.' Geneva: 9 July 2019.

Comparable to BPKN and LPKSM, ACC and ASIC have the same function, which is to handle consumers' complaints. Neither of them has the authority to issue a verdict nor be a legal representative to the parties involved. However, unlike BPKN and LPKSM, the Australian legal enforcers are able to facilitate a dispute resolution along with arranging policy discussion and consultations. Whereas in Indonesia, it is BPSK's undertaking to execute. Thus, it can be concluded that BPKN and LPKSM's authority is divided. In the near future, the government should consider to enhance these organizations' advisory function through improved monitoring of complaints data and follow-up of recommendations, broaden government's education measures, and add mandate for settlement of high-impact consumer disputes. This must be confirmed because there are still many violations that occur. The purpose is to revamp the system so none of the organizations has overlapping authorities and to ensure its efficiency. It's unfortunate that BPKN and LPKSM are not given a broader function.

Furthermore, the position of BPSK as a dispute settlement institution is not working very effectively as expected. The legal uncertainty will serve more harms than to protect consumers. BPSK could issue a final and binding verdict, yet Law No. 8/1999 stated that there are options that can be taken if the BPSK verdict is not fulfilling. In Australia, BPSK has similar functions as ACCC and ASIC as well. Although, the ACCC and ASIC are not authorized to issue a verdict, its function as a dispute settler is still on going. This is to maintain legal certainty. Consumers are given choice to either choose to use ombudsmen, tribunals, or courts. Only tribunals and courts could issue a final and binding verdict. Yet each limited to certain cases only. In other words, there are criteria of case that can be accepted to those institutions.

CONCLUSION

Discussion

It has been around 20 years since the establishment of Law No. 8/1999. This was seen as a step further of consumer protection. Several organizations, BPKN, LPKSM, and BPSK are formed to enforce the law and to embody the initial objectives. Along the way, Indonesia is faced with problems and challenges in running the system smoothly. BPKN and LPKSM are not used as it was intended to be. The same problem also occurred to BPSK. This was due to the rigidness of the law itself. Instead of utilizing consumers' needs, Law No. 8/1999 produces legal uncertainty instead. Additionally, the classic budget problem is also applicable to this case. The government does not seem to prioritize the development of BPSK even though it is stated clearly that each regions and cities should has at least one BPSK operating there.

Surprisingly, the Author does not seem to find this very surprising. Aside from other important state emergencies, the overlapping and ineffective dispute settlement process is the main cause why consumer dispute settlement is not taken seriously. Therefore, there are several solutions which are aimed at strengthening the country's institutional framework. The main proposition is

to put the consumer in the centre of the system and shift the focus away from government guidance towards business.

BPKN should be allowed to have the same level of authority as ACCC or ASIC. First, Enhance BPKN's advisory function through improved monitoring of complaints data and follow-up recommendations. Second, increase budgetary to assert its role and mandate. Lastly, add mandate for settlement of high-impact consumer disputes.

As for BPSK, the internal factor should be considered first. It is necessary to have a mobilization of appropriate resources to professionalise BPSK members through common competency standards and continued training. Consequently, clarify its mandate for settlement of small claims. Ensure the execution of BPSK's decision without having to request the process at the District Court. Lastly is to simplify the procedure of appeal.

Recommendation

Dysrhea for the government can carry out monitoring or supervision of the performance of the BPSK and government authorities as well can revise the content of Law No. 8 Years 1999 concerning Consumer Protection because there is Article That is not appropriate in fact, as with Article 56 paragraph (2), namely 'paras the party may file a objection to the most state court slow 14 (fourteen) working days after receiving notification The verdict in Law no. 8 in 1999 concerning Consumer Protection is stated that the BPSK (which is final and binding) while based on Article 54 paragraph (3) UUPK can take legal action (objection) to the State Court. That is, BPSK's juridical strength is still hanged the court supremacy so it doesn't really is final.

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