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The existence and challenges of consumer dispute settlement agency in Indonesia in globalization era

N.G.N. Renti Maharaini Kerti[*], Faculty of Law, Universitas Trisakti, West Jakarta, Jakarta, Indonesia

[*]Email for Correspondence: renti.m@trisakti.ac.id

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ABSTRACT

Globalization has impacted Indonesia's economy, providing consumers with diverse goods and services. Advances in technology have facilitated global transactions, benefiting consumers. However, businesses have benefited from consumers through advertisements and promotions. The Indonesian Consumer Protection Law offers alternative dispute resolution options, including the Consumer Dispute Settlement Agency (BPSK). Despite the existence of alternative institutions, BPSK remains a necessary institution for quick and affordable dispute resolution. Strengthening the agency, achieving budget independence, improving human resources, establishing an online system, and establishing BPSK in each province and second-level region are crucial for its future success.

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INTRODUCTION

The mandate to establish the Consumer Dispute Settlement Agency (BPSK) in Indonesia has existed since the enactment of Law no. 8 of 1999 concerning Consumer Protection (UUPK) (Purwoko et al., 2020; Subagyono et al., 2022; Syamsudin, 2021). Prior to the enactment of the UUPK, the choice of consumer dispute resolution was through deliberation or through the courts (Pardede, 2022; Saragih et al., 2022; Sujono et al., 2022). The birth of UUPK was dated 20th April 1999 and was officially enacted on 20th April 2000 brought the development of business law in Indonesia where the UUPK mandated BPSK as an out-of-court consumer dispute resolution agency (Article 45) (Lusita et al., 2022).

The BPSK is an out-of-court autonomous organization based in second-level areas that is empowered to handle and resolve consumer issues, in accordance with Article 45 jo.Article 49 paragraph (1) UUPK (Zain, 2020). According to Law No. 23 0f 2014 respecting Governance Area, the name of second-level Regions in the Consumer Protection Law (UUPK) is changed to City or Regency in accordance with the principle of *lex pasietori derogate legi priori*. The trade sector is covered under the responsibilities and powers of BPSK (Samad, 2022; Situmeang, 2020). Budget for implementing BPSK activities are charged to State Revenue and Expenditure Budget (APBN) and other sources in accordance with applicable regulations. The BPSK is not part of the Court. It is anticipated that they will be able to offer consumer protection advice, mediate any consumer disputes, and perform other duties that have come under their purview as authorities for hearing complaints and resolving consumer disputes through Conciliation, Mediation, or Arbitration. It is possible if consumer dispute resolution will be resolved through courts or settlement itself through peaceful means. This depends on the choice of the parties (consumers and business actors).

In economic globalization, dynamics development of the market economy in free market era, issue of consumer protection are one of the important things that must be considered because this is related to the balance of position between business actors on the one hand and consumers on the other (Harahap & Sulaiman, 2023). In fact, there is no balance of power between the position of business actor and the consumer. It is common that the business actor is more powerful than the consumer (Alam & Tejomurti, 2022; Olsen et al., 2014; Talesh, 2015). The business actors have widespread domination because the entire control of products is on the hands of producers (Themselves) (Schüßler et al., 2021; Wood et al., 2021). This condition causes the vulnerability of consumer exploitation by business actors. Unfavorable conditions have prompted the government to enact regulations on consumer protection in order to guarantee legal certainty for the basic rights of consumers (Rahayu & Yani, 2020; Riefa & Saintier, 2020).

In the era of global competition, including regional globalization, Indonesia, as a member of ASEAN (Association of South East Asia Nation), must prepare to compete in ASEAN free market. ASEAN has agreed on the ASEAN Economic Blueprint (2007) as the basis for realizing the ASEAN Economic Community (ASEAN Economic Community/MEA) which one of its characteristics is the achievement of a competitive economic region through implementation of policies and regulations, including in this case the regulations in consumer protection law and also business competition law (Rahmah & Handayani, 2019; Sabri & Yunita Kurniaty, 2018). The implementation of the MEA is agreed to be carried out at the end of 2015. This means that the market where trade transactions for goods and services in ASEAN countries, namely Indonesia, Malaysia, Singapore, Thailand, the Philippines, Brunei Darussalam, Vietnam, Cambodia, Laos, and Myanmar will unite and integrate into one common market.

The Indonesian Supreme Court (MA, *Mahkamah Agung*) has issued Supreme Court Regulation (*Perma, Peraturan Mahkamah Agung*) Number 2 of 2015 concerning Settlement of Simple Lawsuits. The Indonesian Supreme Court's background in issuing Supreme Court Regulation was in order to welcome the ASEAN free trade era which began at the end of 2015, which was predicted to be a lot of conflicts in small-scale commercial/business cases that would end up in court. Therefore, it was necessary to accelerate the trial process with a small claim court system. It was likely that many things would arise in the trade sector when the ASEAN market opened at the end of 2015. On the grounds that BPSK is designated as an institution with the authority to handle and resolve consumer concerns or disputes outside of court, Supreme Court Regulation (*Perma*) Number 2 of 2015 would unquestionably have an impact on the existences of BPSK. Additionally, the Financial Services Authority of the Republic of Indonesia (*Otoritas Jasa Keuangan*/OJK) issued Regulation Number 61/POJK.07/2020 concerning Alternative Institutions for Financial Services Disputes (POJK No.61 of 2020), which became affective on January 1, 2021, and provides for the use of Alternative Instituions for the Settlement of financial Services Sector Disputes (LAPS-SJK).

How is the existence of BPSK as an institution mandated by UUPK in resolving consumer disputes outside of court in accordance with the Supreme Court Regulation (Perma) Number 2 of 2015 concerning Settlement of Simple Lawsuits and Regulation of the Financil Services Authority of the Republic of Indonesia Number 61/POJK.07/2020 concerning Alternative Institutions for Settlement of Financial Services Sector Disputes? And what difficulties will BPSK face in the age of globalization? The goal of the research is to describe and clarify the existence of BPSK as a Consume Dispute Settlement Institution out of court with straightforward litigation settlements under Supreme Court Regulation Number 2 of 2015 and LAPS under POJK Number 61 of 2020, as well as challenges BPSK faces in moving disputes out of court.

METHOD

The object of study in this paper is BPSK in Indonesia as an institution mandated by UUPK to resolve consumer disputes out of court. The author utilizes a kind of normative legal study to address these issues (Soekanto, 2006), with an approach to laws and regulations relating to consumer protection institutions as one of the consumer protection institutions in Indonesia that is required by law to handle consumer disputes out of court linked to the the issue. Secondary data are the sort of data employed, along with qualitative descriptive data analysis. Data analysis is justified not only by summarizing and publishing the data as it it, but also by exposing the truth regarding consumer protection in out-of-cout consume dispute settlement. Deductive reasoning is employed to draw conclusions.

RESULTS AND DISCUSSION

Based on the Consumer Empowerment Index (IKK, *Indeks Keyakinan Konsumen*) of Indonesia in 2021, the level of Indonesian Consumer Empowerment is still at the capable level, which is 50.39 from the empowered (80-100) and critical (60-80) level (IKK Indonesia 2021). This means that Indonesian consumers are aware of the consumer protection law, rights and obligations as consumers, but they are still low in understanding the dimensions of consumer protection, especially in terms of complaints if they experience losses. Most consumers who experience problems prefer not to make complaints for various reasons, such as the risk of loss being experienced is not large, not knowing the place of complaint, considering complaint processes and procedures to be long and complicated, or not knowing who the seller is. However, the awareness of business actors is still low in the application of legal aspects of consumer protection in doing business and the inadequacy of the function of consumer protection institutions, especially the consumer dispute settlement agency (BPSK). There are two areas that need to be changed, first the way business actors and consumers behave in terms of understanding and carrying out their rights and obligations as well as raising consume awareness to encourage them to file complaints when they are damaged. The second aspect is the improvement of consume protection organizations, one of which is the improvement of BPSK organizations.



Figure 1. Indonesian Consumer Empowerment Index

One of the reasons why consumer protection institutions have not been used and understood by the general public is that BPSK, an institution for resolving consumer disputes, is not evenly spread throughput each province, district, and/or city in Indonesia. Institutional capacity and quality in BPSK are still quite low. The issue of minimum BPSK operational budget, the partiality of the Regional Government and the Regional People's Representative Council (DPRD), does not synchronize consumer protection law with regional autonomy law, restrictions as well as low quality human resources at BPSK. Some of the challenges to developing BPSK in Indonesia, in addition to the unequal exixtence of BPSK in each provine and district/city.

Law No. 8 of 1999 concerning Protection provides alternative options for resolving consumer disputes, one of which is dispute resolution out of court through BPSK. In addition, based on Supreme Court Regulation (Perma) No. 2 of 2015 concerning Procedures for Simple Lawsuits Settlement, it provides options for settlement of civil lawsuits on the basis of breach of contract and acts against the law with a loss value of less than Rp. 200 million, which can be submitted for a quick, easy, and low cost settlement through court and for the financial services sector on the basis of the Financial Service Authority (OJK) Regulation No.61 of 2020 concerning Alternative Financial Services Dispute Settlement Institutions, the settlement of financial service consumer complaints can be made through out-of-court settlement at the Financial Services Sector Alternative Dispute Resolution Institution (LAPS-SJK). On the basis of the existing regulations in Indonesia, there is confusion regarding the existence and position of BPSK with courts and LAPS-SJK in settlement of consumer disputes out of court. In addition, in the era of globalization and digitalization BPSK as an institution mandated by the consumer protection law (UUPK) faces many challenges ahead so that the existence and position of BPSK will be stronger. Based on the explanation of Table 1: Institutional Strengthening of BPSK, the author conveys several issues (gaps) of BPSK and how to take strategic initiatives in the future so that BPSK is able to answer future challenges in the globalization era and digitalization in Indonesia.

Table 1. Institutional Strengthening of BPSK

Key Success Factor	Issues (Gap)	Strategic Initiative	Remarks
Position existence of BPSK	Confusion regarding the mandate of BPSK and its position compared to the general court (at the district/city level), the pathway for settling a simple lawsuit in court on the basis of Supreme Court Regulation (Perma) No. 2 of 2015 and the dispute resolution path at the Alternative Dispute Settlement Institution for the Financial	1. Re-establish BPSK's position as a consumer dispute settlement institution out of court in accordance with the mandate of the consumer protection law (UUPK). 2. Improve BPSK procedural law and further explanation regarding	

	Services Sector on the basis of an Financial Services Authority (OJK) Regulation No. 61 of 2020.	standard procedure for dispute resolution through BPSK and the courts. 3. Improving the literacy of consumer dispute resolution to the wider community.
BPSK's Budget	The limitations of BPSK's operational funds are due to the formation by the President, the organization is determined by the Ministry of Trade, but the funding is handed over to the Regional Government.	1. Central Government policy so that BPSK's operational funding can be through the APBN. 2. Independency of BPSK's Budget.
BPSK's Human Resources	The competence of personnel, especially BPSK Judges' Council personnel, is still inadequate.	Improving the competence of BPSK Panel of Judges through training in procedural law and consumer protection law as well as understanding the supervision of standard clauses.
BPSK synergy with related institutions	There is no synergy between BPSK and related institutions, such as the Alternative Dispute Resolution Institution in the Financial Services Sector located at the Financial Services Authority and the Court in the context of settling simple claims through the court.	There needs to be cooperation between BPSK and related institutions, such as Court, Alternative Dispute Resolution Institutions at the Financial Services Authority (OJK) so as to create an integrated consumer dispute resolution.
Consumer complaint and consumer dispute resolution channel	Consumer complaint channels are spread across several related Ministries and Institutions.	It is necessary to integrate consumer complaint channels in an integrated manner so as to create consumer complaint channel connectivity.
Online consumer dispute resolution system (Online Dispute Resolution/ODR)	There is no online consumer dispute resolution system at BPSK. Registration and settlement of lawsuits at BPSK is still done conventionally.	In the future, it is necessary to create an online consumer dispute resolution system at BPSK including lawsuit registration that can be done online to make it easier for consumers to register and resolve disputes.
Establishing BPSK in each Province and Regency/City in Indonesia	1. BPSK is not yet comprehensive in every province and district/city in Indonesia. 2. There are BPSKs in provinces and districts/cities in Indonesia that are suspended or are no longer active.	1. Increase the establishment of BPSK in provinces and districts/cities where there is no BPSK. 2. Reviving suspended or no longer active BPSK in the province or district/city. 3. Increase understanding of the importance of consumer protection in each local government throughout Indonesia. 4. Increase the active participation of each local

	government in supporting BPSK in both the province and district/city in Indonesia.

CONCLUSION

As a legal umbrella for consumer protection in Indonesia, Law Number 8 of 1999 concerning Consumer Protection has mandated BPSK as a Consumer Dispute Settlement Agency out of court. Although in Indonesia there is a Supreme Court Regulation (Perma) No. 2 of 2015 concerning the Settlement of Simple Lawsuits and the Regulation of the Indonesian Financial Services Authority (OJK) Number 61 /POJK.07/2020 concerning Alternative Institutions for Settlement Disputes in the Financial Services Sector does not eliminate the existence of BPSK as a consumer dispute resolution institution out of court that can help Indonesian consumers settle issues swiftly and affordably. In order for Indonesia to successfully navigate the globalization period, the author contends that BPSK's institutional foundationa needs to be strengthened. In the context of strengthening BPSK institutions in Indonesia, the authors suggest that it is required for BPSK to have budgetary independence, to recognize a system of online dispute resolution to address the challenges of the digitalization era, as well as the government's commitment to establish BPSK in each province and second-level region in Indonesia, to make it easier for parties to resolve disputes, and to improve the quality of resources, especially the quality of the panel of judges, to create harmonious synergies between related institutions such as the Financial Services Sectors Dispute Settlement Institution at the Finacial Services Authority (OJK).

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