



DOI: <https://doi.org/10.38035/gijlss.v3i1>
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Duties and Authorities of the Consumer Dispute Resolution Agency and its Position in the Perspective of the Judicial System in Indonesia

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Abstract: The Consumer Dispute Resolution Agency (BPSK) is an agency specifically established to resolve consumer disputes outside the courts. Normatively, there are many conveniences provided by law to consumers in resolving their disputes through BPSK. However, in its implementation, this is not the case because consumers often experience various difficulties in resolving disputes through BPSK, especially related to the trial process, legal remedies that can be submitted, and the binding force of its decisions. This is more due to its position, which is not appropriate and is outside the Indonesian judicial system, which is based on Law Number 48 of 2009 concerning Judicial Power. There are multi-functional duties and authorities, namely executive functions, judicial functions, and advocacy functions. It can be said that from a judicial perspective, BPSK is quasi.

Keyword: Agency, Dispute Resolution, Tasks, Authority, Judicial System.

INTRODUCTION

The birth of Law Number 8 of 1999 concerning Consumer Protection cannot be separated from and therefore is a form of government concern for the fate of consumers who often experience losses in carrying out consumer transactions. In many cases, especially related to the production process of goods and/or services produced by business actors, the position of consumers is very unbalanced and weak compared to business actors (Ahmad & Zamri, 2024). Consumers never know how the production process is carried out by business actors in producing goods and/or services to become goods and/or services that are ready to be served and consumed by consumers. Coupled with the implementation of standard agreements by business actors in offering or distributing goods or services they produce, it further increases the potential for losses for consumers (Ariefulloh et al., 2023). This has encouraged lawmakers, both the House of Representatives and the government, to ratify and enact Law Number 8 of 1999 concerning Consumer Protection, dated April 20, 1999, and effective since April 20, 2000 (State Gazette of the Republic of Indonesia 1999, Number 42, Supplement to the State Gazette of the Republic of Indonesia Number 3821).

In accordance with the title of the law, "Consumer Protection," this law contains many rules that are intended to protect the rights and interests of consumers, including a number of conveniences and siding with consumers compared to business actors. Among them is the establishment of the Consumer Dispute Resolution Agency (BPSK) as an institution for resolving consumer disputes outside the court (Wardhani et al., 2022). Consumer disputes themselves are disputes between business actors and consumers who demand compensation for damage, pollution, and/or who suffer losses due to consuming goods and/or using services. At the normative level, many conveniences are given to consumers in resolving their disputes through the Consumer Dispute Resolution Agency. Among them are low costs and relatively faster time, where the decision must be rendered within 21 (twenty-one) working days according to Article 55 of the UUPK, and the burden of proof is reversed in certain cases according to Article 19 of the UUPK (Anwary, 2023).

Despite the many conveniences provided to consumers in resolving their disputes outside the court through BPSK, there are legal issues related to its duties and authorities and its existence when linked to the judicial system in Indonesia based on Law No. 48 of 2009 concerning Judicial Power as an amendment to Law No. 14 of 1970 concerning the Main Provisions of Judicial Power as the applicable law and the legal basis for the implementation of the judicial system in Indonesia when Law No. 8 of 1999 concerning Consumer Protection was enacted (Wijaya & Nasran, 2021). According to Law Number 48 of 2009 as the current judicial power law and Law Number 14 of 1970 as the judicial power law in force when Law No. 8 of 1999 was enacted, it has been determined that there are 4 (four) judicial institutions as implementers of judicial power under the Supreme Court, namely General Courts, State Administrative Courts, Religious Courts, and Military Courts (Nisantika & Maharani, 2021).

Through Article 27, paragraph (1), of Law No. 48 of 2009, it is stipulated that a special court can only be established in one of the judicial environments under the Supreme Court. The explanation confirms that what is meant by "special court" includes, among others, a juvenile court, a commercial court, a human rights court, a corruption court, an industrial relations court, and a fisheries court, which are within the general judicial environment, as well as a tax court, which is within the state administrative judicial environment (Leiser, 2022). This is the main problem that we want to study and analyze legally through writing this scientific paper so that it can be clearly understood what the duties and authorities of BPSK are and its existence if they are related to the judicial system in Indonesia based on the law on judicial power.

METHOD

This research is normative legal research, also known as doctrinal legal research. The focus of the research is aimed at and related to the inventory of legal principles and the application of the law, both operationally by institutions and in terms of legal settlement procedures in practice. The approach used in this research is the statute approach through a number of laws and regulations related to the main problem. Given that the research method used in this research is normative research, the type of data used is secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials, with data collection techniques through document or literature studies.

RESULT AND DISCUSSION

1. Duties and Authorities of the Consumer Dispute Resolution Agency

In accordance with Article 52 of Law No. 8 of 1999 concerning Consumer Protection in conjunction with Article 3 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency in

conjunction with Article 4 paragraph (1) of the Regulation of the Minister of Trade of the Republic of Indonesia Number 6/M-DAG/PER/2/2017 concerning the Consumer Dispute Resolution Agency, the following are the duties and authorities of the Consumer Dispute Resolution Agency in carrying out its function as an agency that handles and resolves consumer disputes outside the courts (Chawla & Kumar, 2022):

- a. Carrying out handling and resolution of consumer disputes by means of mediation, arbitration, or conciliation.
- b. Providing consumer protection consultation.
- c. Supervising the inclusion of standard clauses.
- d. Reporting to the general investigator if there is a violation of the provisions of Law No. 8 of 1999 concerning Consumer Protection.
- e. Receiving complaints, both written and unwritten, from consumers regarding violations of consumer protection.
- f. Conducting research and examination of consumer protection disputes.
- g. Summoning business actors who are suspected of violating consumer protection.
- h. Notifying the decision to business actors who violate consumer protection.
- i. Imposing administrative sanctions on business actors who violate the provisions of Law No. 8 of 1999 concerning Consumer Protection.

In terms of its duties and authorities as stipulated above, BPSK has a role or multi-function, both as an executive and judicial task and even as advocacy, namely as follows (Amalia et al., 2022):

- a. The role of BPSK in the executive field: Supervise the inclusion of standard clauses.
- b. The role of BPSK in the judicial field:
 - 1) Carry out handling and resolution of consumer disputes by means of mediation, arbitration, or conciliation.
 - 2) Summon business actors who are suspected of violating consumer protection.
 - 3) Summon and present witnesses, expert witnesses, and/or anyone who is considered to know about violations of the law.
- c. The role of BPSK in the field of advocacy:
 - 1) Provide consumer protection consultations.
 - 2) Receiving complaints, both written and unwritten, from consumers regarding violations of consumer protection.

In this regard, Yatini and Hj. Wahyuni Safitri stated that BPSK in this case has a dual nature: on the one hand, Law No. 8 of 1999 concerning Consumer Protection provides judicial authority to resolve consumer disputes, and on the other hand, executive authority is given to BPSK to supervise the inclusion of standard clauses made unilaterally by business actors.

2. Position of the Consumer Dispute Resolution Agency from the Perspective of the Indonesian Justice System

Etymologically, position comes from the root word "sit," which can mean "stay, stay." And position is "the location or place of an object." Based on the understanding of position, what is meant in the analysis of this discussion is the place and existence of the Consumer Dispute Resolution Agency (BPSK) as a dispute resolution institution in the judicial system in Indonesia, namely the place of BPSK in the layout of the judicial system or in the judicial power system in Indonesia according to law (Gunawan & Helvis, 2023). The judicial system in question is the judicial system itself, a unit of the judicial body that

exercises judicial power (judicial) in Indonesia. The legal basis of the judicial system in Indonesia is regulated in Law No. 48 of 2009 concerning Judicial Power. This law is an organic regulation of Article 24 of the 1945 Constitution in conjunction with Article 24 of the Third Amendment to the 1945 Constitution as the legal basis of the judicial system in Indonesia, which in paragraph 2 stipulates that judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative judicial environment, and by a Constitutional Court (Matnuh, 2021).

In Article 18 of Law No. 48 of 2009 concerning Judicial Power, it is stipulated that judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state administrative judicial environment, and by a Constitutional Court (Arifin et al., 2021). Furthermore, through Article 27, paragraph (1), it is stipulated that a special court may only be established in one of the judicial environments under the Supreme Court as referred to in Article 25. Based on the provisions in Article 25 and Article 27 of Law No. 48 of 2009, it can be seen that there is no special court that stands alone outside the existing judicial institution, and its establishment must be based on the law in accordance with Article 27 paragraph (2). The normative provisions regarding the establishment of BPSK are Law No. 8 of 1999 concerning Consumer Protection. Based on the provisions in Article 45, paragraph (1), and Article 49, paragraph (1), it can be seen that BPSK is a special dispute resolution institution outside the court for disputes that occur between consumers and business actors. On the other hand, Article 1, number (11), stipulates that the Consumer Dispute Resolution Agency is an agency tasked with handling and resolving disputes between business actors and consumers (Graef & Van Berlo, 2021).

Likewise, it is stipulated in the organic rules regarding the establishment of BPSK, namely in Article 1, number (1), of the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/12/2001, which states that the Consumer Dispute Resolution Agency is an agency tasked with handling and resolving disputes between business actors and consumers (Cauffman & Goanta, 2021). The same thing is regulated in Article 1, number (5), of the Regulation of the Minister of Trade of the Republic of Indonesia No. 06/M-DAG/PER/2/2017, which stipulates that the Consumer Dispute Resolution Agency, hereinafter abbreviated as BPSK, is an agency tasked with handling and resolving consumer disputes. Based on the provisions stated in Article 45 paragraph (1), Article 49 paragraph (1), Article 1 number (11) of Law No. 8 of 1999, and Article 1 number (1) of Decree of the Minister of Trade No. 350/MPP/Kep/12/2001 in conjunction with Article 1 number (5) of Regulation of the Minister of Trade No. 06/M-DAG/PER/2/2017 as described above, it can be seen that BPSK is a dispute resolution institution specifically formed to resolve disputes arising between consumers and business actors (Abubakar & Handayani, 2021).

Yusuf Sofie stated that by referring to Article 45, paragraph (1), and Article 54, paragraph (1), of the Consumer Protection Law (UUPK) in conjunction with Article 2 of Decree of the Minister of Trade No. 350/Kep/12/2001, the main function of the Consumer Dispute Resolution Agency (BPSK) is as a legal instrument for resolving disputes outside the court. Jannus Sidabalok also stated that the Consumer Dispute Resolution Agency (BPSK) is an institution that examines and decides consumer disputes, which functions as if it were a court (Harjono & Panjaitan, 2021). Therefore, BPSK can be called a quasi-judicial court. To find out how BPSK stands in the judicial system and/or judicial power in Indonesia, it must be tested based on the laws governing the judicial system in Indonesia, namely those stated in Law No. 48 of 2009 concerning Judicial Power or Law No. 14 of 1970, which was in effect at the time of the establishment of BPSK with Law No. 8 of

1999 concerning Consumer Protection. Article 10, paragraph (1), of Law No. 14 of 1970 stipulates that judicial power is exercised by courts within the scope of general courts, religious courts, military courts, and state administrative courts (Panjaitan, 2021).

According to the explanation, this statute makes a distinction between four judicial contexts, including first-level and appellate courts, each of which has a specific jurisdiction. While general courts are courts for the general public in regards to civil and criminal matters, religious, military, and state administrative courts are special courts since they try specific cases or cases involving certain groups of individuals. The possibility of specialization in each of these four judicial environments is not precluded by their differences; for instance, in general courts, specializations in the form of traffic courts, juvenile courts, economic courts, and so forth can be created by law. Furthermore, Article 13 stipulates that special judicial bodies in addition to existing judicial bodies can only be established by law (Hannan & Syarif, 2023). Under the enactment of Law No. 14 of 1970 concerning the Main Provisions of Judicial Power, there are special courts established by law and under the general courts, namely the Juvenile Court established by Law No. 3 of 1997 and the Commercial Court established by Government Regulation in Lieu of Law (Perpu) No. 1 of 1998 concerning Amendments to the Bankruptcy Law, which was later ratified into law by Law No. 4 of 1998 concerning the Stipulation of Perpu No. 1 of 1998 concerning Amendments to the Bankruptcy Law into Law.

By observing and scrutinizing Law No. 8 of 1999 concerning Consumer Protection as the basis for the establishment of BPSK as a special dispute resolution institution that occurs between business actors and consumers, including its implementing regulations stated in the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/12/2001 and Regulation of the Minister of Trade of the Republic of Indonesia No. 06/M-DAG/PER/2/2017, it can be seen that the establishment of BPSK as a special consumer dispute resolution institution outside the Court is not based on the Basic Law on Judicial Power, namely Law No. 14 of 1970 concerning the Provisions on the Basic Provisions on Judicial Power that was in effect at that time or other laws and regulations in the field of Judicial Power. In the national considerations, the "remembering" section of the laws and regulations for the establishment of BPSK, including Law No. 8 of 1999 concerning Consumer Protection, only includes Article 5 paragraph (1), Article 21 paragraph (1), Article 27, and Article 33 of the 1945 Constitution and does not include the law on the Basic Provisions on Judicial Power or other laws and regulations in the field of judicial power (De Sousa et al., 2022).

Since BPSK is institutionally under the Ministry of Trade or is a part of the executive rather than the judiciary, it makes sense from an institutional standpoint that Law No. 14 of 1970 and other laws and regulations in the area of judicial power in Law No. 8 of 1999 concerning Consumer Protection are not included as the foundation for the establishment of BPSK. Despite the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/12/2001 and Regulation of the Minister of Trade of the Republic of Indonesia No. 06/M-DAG/PER/2/2017, the "considering" section's considerations list Law No. 22 of 1999 concerning Regional Government, as amended by Law No. 23 of 2014 concerning Regional Government and, most recently, by Law No. 9 of 2015 concerning the Second Amendment to Law No. 23 of 2014 concerning Regional Government, in addition to citing Law No. 8 of 1999 concerning Consumer Protection as the foundation for its establishment. Additionally, the modified Law No. 25 of 1999 on the Financial Balance Between the Central and Regional Governments by Law No. 33 of 2004 concerning the Financial Balance Between the Central and Regional Governments. Then PP No. 25 of 2000 concerning the Authority of the Provincial Government as an Autonomous Region, Law No. 2 of 2014 concerning Trade, and Decree of the Minister of

Industry and Trade No. 86/MPP/Kep/3/2001 concerning the Organizational Structure and Work Procedures of the Ministry of Industry and Trade further emphasize that institutionally, BPSK is part of the executive cq. Ministry of Trade. This provision is further strengthened by the provisions stated in Article 6, paragraph (2), of the Regulation of the Minister of Trade of the Republic of Indonesia No. 06/M-DAG/PER/2/2017, which states that the government elements as referred to in paragraph (1) come from the regional apparatus in the provincial and/or regency/city governments that are the domicile of BPSK. Likewise, it is stipulated in Article 15, paragraph (2), letter (a), which regulates special requirements to be appointed as a BPSK member, namely having the lowest rank of Administrator or Group III/C for BPSK member candidates who come from government elements. BPSK members who come from government elements are State Civil Apparatus from the Ministry of Trade or Regional Government Apparatus (Razmetaeva et al., 2022).

According to the region's financial capacity, it is also stipulated that the Provincial Revenue and Expenditure Budget (APBD) will be used to cover the operational costs of BPSK, the honoraria paid to the chairman and BPSK members, and the honoraria paid to the head of the Secretariat and Secretariat members. The costs of carrying out BPSK's responsibilities are charged to the State Revenue and Expenditure Budget (APBN) and the Regional Revenue and Expenditure Budget (APBD), per the provisions of Article 90 of Presidential Decree No. 9 of 2001 concerning the Establishment of the Consumer Dispute Resolution Agency in the Medan City Government, Palembang City, Central Jakarta City, West Jakarta City, Bandung City, Semarang City, Yogyakarta City, Surabaya City, Malang City, and Makassar City. Because BPSK is structurally under the Ministry of Trade, it retains executive authority in the course of its operations, which indirectly creates the risk of judicial tasks being hampered, Susanti Adi Nugroho explained. According to Law No. 8 of 1999, the Consumer Dispute Resolution Agency (BPSK) is an organization with the power to investigate and make decisions but lacks the means to carry them out. Thus, it may be said that BPSK is not a quasi-judicial institution with a judicial function. Therefore, even if BPSK is named as the defendant in this complaint, business actors who lose a consumer dispute decided by BPSK file an objection to the District Court in a number of places (Reiling & Contini, 2022).

Yatini and Hj. Wahyuni Safitri stated that BPSK in this case has a dual nature; on the one hand, Law No. 8 of 1999 concerning Consumer Protection provides judicial authority to resolve consumer disputes, and on the other hand, executive authority is given to BPSK to supervise the inclusion of standard clauses made unilaterally by business actors. (Panjaitan, 2021) stated that in terms of its decision, in relation to the requirements for decisions according to Law No. 48 of 2009 concerning Judicial Power, there are deviations or inconsistencies. Law No. 14 of 1970 concerns the main provisions of judicial power as the provisions of judicial power that apply when Law No. 8 of 1999 was enacted through Article 4, paragraph (1). It has been stipulated that the trial is carried out "for the sake of justice based on the one almighty God." The explanation states that this formulation applies to all courts in all judicial environments. The same thing is regulated in Article 4, paragraph (1) of Law No. 4 of 2004 concerning Judicial Power, which stipulates that trials are carried out "for the sake of justice based on the Almighty God." And according to Law No. 48 of 2009 concerning Judicial Power, this is a principle in the implementation of judicial power, which is regulated in Article 2, paragraph (1), which stipulates that trials are carried out "for the sake of justice based on the Almighty God".

The executorial power of a court decision is in the words "For the Sake of Justice Based on the Almighty God." With the understanding that if there is no such word, then the decision cannot be executed or is non-executable. The words "For the Sake of Justice

Based on the Almighty God" are at the head of the decision that gives executorial power to a decision. If this head of the decision is not affixed to a court decision, then the judge cannot enforce the decision (Insani et al., 2024). If it is associated with the decision of the Consumer Dispute Resolution Agency, it can be seen that the structure of the BPSK decision, both decisions obtained based on conciliation, mediation, or arbitration, it turns out that the decision does not have a head of the decision in the form of the words "For the Sake of Justice Based on the Almighty God," so that as a result, according to the applicable legal provisions as stated in Law No. 48 of 2009, the BPSK decision cannot be executed and is non-executable. The executive power of a decision to be executed is based on the principle "For the Sake of Justice Based on the Almighty God".

Thus, including the BPSK decision obtained based on arbitration procedures, there is no irah-irah "For the Sake of Justice based on the Almighty God," while in Article 54, paragraph (1) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it has been stipulated that an arbitration decision must contain a decision head or irah-irah "For the Sake of Justice based on the Almighty God." As a result, what is regulated in Article 57 of Law No. 8 of 1999 concerning Consumer Protection, which states that the panel's decision as referred to in Article 54 paragraph (3) is requested to be executed by the District Court in the place where the consumer was harmed, cannot be operationally applied because there is no irah-irah "For the Sake of Justice based on the Almighty God," as required in Article 2 paragraph (1) of Law No. 48 of 2009. Abdul Halim Barkatullah stated that, from the perspective of the judicial system in Indonesia, the BPSK Council's decision is basically non-litigation, so that if there is a party that objects to the BPSK decision, they can file it with the District Court. In the sense that the BPSK decision does not have executorial power. The provisions of Article 58 of Law No. 8 of 1999, which require the district court to be required to process the settlement of a case through ordinary civil lawsuit proceedings. This shows that the position of the legal process and the BPSK decision is basically non-judicial. In the sense that the BPSK decision is another carriage in the series of carriages of the court system mechanism, so it is outside the general judicial mechanism.

In this regard, Yusuf Sofie stated that BPSK was not designed as a court; there are no judges, and there is no authority to execute decisions. BPSK is not a small claims court, perhaps similar. BPSK is a quasi-rechtspraak like the Regional Dispute Resolution Committee (P4D) or the Central Dispute Resolution Committee (P4P), which has been liquidated, and its replacement is the Industrial Relations Court (PHI), which has carried out its duties based on Law No. 2 of 2004 concerning the Industrial Relations Court (abbreviated as the 2004 PHI Law) and its implementing regulations. Based on the matters described above, both according to existing laws and regulations as secondary data and primary legal materials and doctrines or opinions of scholars as secondary legal materials, it can be concluded that the Consumer Dispute Resolution Agency (BPSK) is a dispute resolution institution that is outside and not included as a judicial institution in the judicial system and/or judicial power in Indonesia. The legislation states that arbitration and alternative dispute resolution are the only forms of out-of-court dispute settlement, hence BPSK cannot be considered an out-of-court dispute resolution organization. While alternative dispute resolution is a mechanism for settling disagreements or conflicts through processes decided upon by the parties, such as out-of-court settlement through consultation, negotiation, mediation, conciliation, or expert assessment, arbitration is a means of resolving a civil dispute outside of court based on an arbitration agreement made in writing by the disputing parties (Mustafa, 2021).

From the perspective of legal protection, it can be stated that the presence of BPSK as an institution for resolving consumer disputes outside the court is a repressive legal

protection, as stated by Philipus M. Hadjon, in the form of establishing a dispute resolution institution after a dispute occurs between consumers and business actors. Legal protection itself aims to provide a sense of security, certainty, and justice for the community. From the perspective of legal protection like this, the existence of Law No. 8 of 1999 and a number of its organic regulations concerning the formation and establishment of BPSK, which is outside the judicial system and is not part of the judicial power in Indonesia, does not provide legal protection for the parties between consumers and business actors because the examination is not pro justitia and its decision does not have executorial power because it does not have the *irah-irah* "For Justice Based on the Almighty God." The existence of BPSK as a dispute resolution institution specifically for resolving consumer and business actor disputes outside the court is a form of providing legal protection to consumers as a means of fulfilling consumer rights according to the law, especially the right to receive advocacy, protection, and efforts to resolve consumer disputes properly as regulated in Article 4 letter (f) of Law No. 8 of 1999. So that with its formation through normative regulations, it is a preventive legal protection that is carried out before a dispute occurs, as stated by Philipus M. Hadjon.

CONCLUSION

Observing the regulation of the duties and authorities of the Consumer Dispute Resolution Agency as stipulated in Article 52 of Law No. 8 of 1999 in conjunction with Article 3 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/Kep/2001 in conjunction with Article 4 paragraph (1) of the Regulation of the Minister of Trade of the Republic of Indonesia No. 6/M-DAG/PER/2/2017, it is known that the BPSK has multi-function duties, each in the executive, judicial, and advocacy fields, so that the BPSK is not a dispute resolution institution as an executor of judicial power under the Supreme Court.

The BPSK is a quasi-judicial body. From the perspective of the judicial system in Indonesia based on the Law on Judicial Power, namely Law No. 48 of 2009, the BPSK is outside the judicial system in Indonesia, and its formation is not based on statutory regulations in the field of judicial power. In order to optimize the function of BPSK as an institution for resolving consumer disputes outside the courts, it is hoped that the current position and existence of BPSK can be adjusted to the provisions contained in the laws and regulations in the field of judicial authority.

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