

## Settlement of Consumer Disputes According to Law Number 8 of 1999 Reviewed Based on Business Competition Law

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### ABSTRACT

The Consumer Dispute Settlement Agency (BPSK) holds the authority to resolve consumer disputes through non-litigious means in accordance with Law Number 8 of 1999 concerning Consumer Protection and its implementing regulations. The operational framework of BPSK is explicitly governed by the Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001. This study aims to analyze the authority and procedures employed by BPSK in resolving consumer disputes, with a particular focus on the BPSK Lubuklinggau City Decision Number: 002/P.Arbitrase/Bpsk-Llg/IV/2021. Employing a normative juridical research approach, this study reviews relevant literature on Consumer Protection Law and Electricity Law. The findings indicate that the authority and resolution process of BPSK require two essential elements: the existence of consumer losses and that such losses arise from the consumption of goods or services provided by business actors. Furthermore, the Lubuklinggau City BPSK Decision Number: 002/P.Arbitrase/Bpsk-Llg/IV/2021 is found to contain formal deficiencies. It is recommended that revisions and harmonization of Law Number 8 of 1999 and other related regulations be undertaken to enhance legal clarity and effectiveness.

**Keywords:** BPSK, Consumer Protection, Dispute Resolution

### INTRODUCTION

Aristotle posited that the fundamental purpose of society is to achieve justice, with law serving as the essential instrument to realize this goal. According to Aristotle's doctrine of causality, law exists due to four causes: material, formal, efficient, and final causes (Leonard, 2014). He further argued that law not only reflects and regulates constitutional order but also governs judicial behavior and decision-making, while imposing sanctions on law violators (Ramadhana, 2018). This framework underscores the necessity of legal certainty in social interactions, emphasizing that laws must be both implemented and enforced consistently (Fuller, 1964).

From a jurisprudential perspective, law is broadly divided into public law and private law (Leonard, 2023). Public law governs matters of public interest, whereas private law regulates relationships between individuals or entities, often encapsulated within civil law. Procedural civil law functions as formal law aimed at enforcing substantive civil law, wherein legal subjects seek to assert or defend their rights through judicial processes (Soekanto, 2010). Indonesia's identity as a state governed by law (*rechtsstaat*), as enshrined in Article 1 paragraph (3) of the 1945 Constitution, distinctly contrasts it from a state governed by power (*machstaat*), reinforcing the primacy of law and legal certainty in dispute resolution (Pakpahan, 2022).

Within the realm of private law, disputes frequently arise from violations of civil rights, compelling aggrieved parties to invoke applicable legal mechanisms for protection—such as in land ownership disputes or consumer rights violations (Sinaga, 2015). When amicable settlement is unattainable, litigation becomes the recourse,

requiring disputing parties to substantiate their claims and prove the alleged wrongdoing of the opposing party (Abdurasyid, 2011). This procedural framework aligns with the theory of procedural justice, which stresses that fair processes legitimize legal outcomes and foster social acceptance (Thibaut & Walker, 1975).

The judiciary plays a pivotal role as the institutional mechanism for concretizing (in concreto) the law, guaranteeing compliance with substantive legal norms through procedures prescribed by formal law (Prasetyo, 2021). In a constitutional democracy and rule-of-law state, the judiciary functions as a critical safeguard against legal violations and societal disorder, serving as the “last resort” in the pursuit of truth and justice (Kansil, 1989). Article 24 paragraph (1) of the 1945 Constitution mandates judicial power as an independent authority tasked with administering justice to uphold law and fairness (Asshiddiqie, 2013).

Further, Articles 24 paragraphs (2) and (3) of the Constitution delineate the scope of judicial power, exercised by the Supreme Court, subordinate judicial bodies, and the Constitutional Court, while also recognizing other related institutions governed by law (Kurniawan, 2011). Law Number 48 of 2009 on Judicial Power elaborates these roles, encompassing investigation, inquiry, prosecution, enforcement of decisions, legal aid provision, and alternative dispute resolution mechanisms—processes particularly relevant for consumer dispute settlements outside formal litigation (Saragih, 2017).

Hence, the resolution of consumer disputes under Law Number 8 of 1999 should be understood not only within the framework of private law but must also integrate principles of business competition law. This integration is imperative given that consumer disputes frequently implicate issues of fair competition and consumer protection, recognizing consumers’ vulnerability in market transactions (Schumpeter, 1942; Stigler, 1964).

## METHOD

This study utilizes a normative juridical approach, also known as doctrinal legal research, to explore the legal framework governing the settlement of consumer disputes under Law Number 8 of 1999, especially in relation to business competition law. This approach involves a comprehensive examination of legal principles, statutory provisions, and doctrinal interpretations contained within relevant laws and regulations. By analyzing these sources, the research aims to understand the theoretical and normative basis for consumer dispute resolution in Indonesia.

In addition to the normative analysis, this research employs an analytical descriptive method to systematically describe and interpret the factual and legal realities surrounding consumer dispute settlements. This method facilitates a detailed and structured overview of the legal mechanisms, policies, and judicial practices that govern dispute resolution processes. Through this approach, the research seeks to identify and explain relevant facts and legal norms that influence the resolution of consumer disputes.

The study applies several analytical perspectives to deepen the understanding of the subject matter. The statute approach involves analyzing relevant laws and regulations, particularly consumer protection statutes and competition law. The conceptual approach examines foundational legal concepts and doctrines underpinning dispute resolution. Lastly, the case approach reviews judicial decisions and legal precedents to illustrate how the laws are practically applied in consumer dispute cases.

These combined approaches ensure a thorough and multidimensional analysis of the legal issues addressed in this research.

## RESULTS AND DISCUSSION

### 1. Consumer Dispute Resolution at the Consumer Dispute Resolution Agency (BPSK)

Normatively, the Consumer Dispute Resolution Agency (BPSK) is authorized to resolve consumer disputes outside the judicial system at the Level II regions, which include regency capitals or cities. In exercising its authority, BPSK undertakes several duties, including resolving disputes through conciliation, mediation, or arbitration, providing consumer protection consultation, supervising the inclusion of standard contract clauses, and reporting violations of Law Number 8 of 1999 concerning Consumer Protection to the general investigator. Additionally, BPSK receives both written and oral consumer complaints, conducts research and examinations into consumer protection disputes, summons business actors suspected of legal violations, and calls witnesses or experts related to these disputes. The agency is also empowered to request investigative assistance when parties fail to comply with summons, gather and evaluate documentary evidence, and determine whether consumers have suffered losses.

Consumers who experience harm, their legal representatives, or heirs may submit dispute resolution requests to BPSK either verbally or in writing through the agency's secretariat. Complaints can be filed at the BPSK office nearest to the consumer's residence. Applications made by heirs or attorneys are permissible under specific conditions, such as consumer death, incapacity due to illness or age, minority status, or foreign citizenship. Upon receiving a written complaint, the BPSK secretariat issues a receipt to the complainant; oral complaints are recorded, signed or thumbprinted, and similarly acknowledged. Applications are formally logged with dates and registration numbers. The Head of BPSK may reject complaints that do not comply with procedural requirements or fall outside the agency's jurisdiction, as mandated by Article 16. It is important to note that legal representation by attorneys in the traditional sense is generally not permitted during dispute resolution, except for certain specific matters. Instead, business actors may be represented by employees from their legal division who must present valid evidence of their employment status.

Upon acceptance of a valid application, the Head of BPSK issues a summons to the business actor within three working days, specifying the date, time, and venue of the initial hearing, which must be held no later than the seventh working day following receipt of the complaint. The dispute resolution process, whether conciliation, mediation, or arbitration, depends on the parties' mutual agreement. In conciliation, the BPSK panel adopts a passive role, allowing the parties to negotiate independently. During mediation, the panel actively facilitates the negotiation by offering recommendations, whereas arbitration involves selection of an arbitrator from among BPSK members, with the chairperson typically appointed from government representatives. The BPSK panel's decisions vary accordingly: conciliation and mediation produce written agreements, while arbitration results in a formal ruling which may grant the claim, reject it, or recommend settlement, as stipulated in Article 40 of the Ministerial Decree Number 350/2001.

## **2. Legal Considerations of District Court Judges in Issue-Making Decisions Based on Law Number 8 of 1999 Concerning Consumer Protection**

In Decision Number 002/P.Arbitrase/BPSK-Llg/IV/2021, the Lubuklinggau BPSK Assembly accepted a consumer dispute report regarding the unauthorized installation of an electricity pole by PLN Lubuklinggau on the complainant's land. The consumer asserted ownership of the land without any lease agreement, either verbal or written. According to Article 1 Number 2 of Law Number 8 of 1999 and Article 1 Number 2 of the Ministerial Decree Number 350/MPP/Kep/12/2001, a consumer is defined as any individual or entity that uses goods and/or services for personal, familial, or other non-commercial purposes. Based on this definition, ownership of land does not constitute consumer status, as consumers are users rather than owners of goods or services.

The theory of dispute resolution underscores that resolution mechanisms must be tailored to the type or category of dispute, thus consumer disputes should only be initiated by those who meet the consumer criteria as defined by the applicable law and ministerial regulations. Furthermore, the legal reasoning in the Lubuklinggau decision did not analyze the elements of unlawful acts as articulated in Articles 8 to 18 of Law Number 8 of 1999. Instead, it focused on property ownership status and the refusal of the complainant to cover relocation costs for the electricity pole. Articles 1 Number 8 of Ministerial Decree Number 350/MPP/Kep/12/2001 and Article 1 Number 4 of Ministerial Regulation Number 72 of 2020 stipulate that consumer disputes involve demonstrable losses incurred through the consumption of goods or services produced or traded by business actors. The Consumer Protection Law broadly defines goods as any tangible or intangible objects, movable or immovable, which can be traded or utilized by consumers. As electricity is categorized as a good within this framework (Soesilo, 1995), it falls within the scope of consumer dispute objects under the law.

The Lubuklinggau BPSK Assembly further noted that PLN Lubuklinggau did not attend the arbitration hearing due to lack of agreement on the dispute resolution method. Despite the defendant's absence and prior notification thereof, the arbitration proceeded. Article 36 of the Ministerial Decree Number 350/MPP/Kep/12/2001 prescribes that arbitration is only applicable when both consumers and business actors have consented to this method of dispute resolution. The continuation of arbitration in absence of the defendant raises questions regarding procedural fairness and compliance with statutory provisions.

### **Discussion**

Based on the findings regarding consumer dispute resolution at the Consumer Dispute Resolution Agency (BPSK) and the legal considerations of district court judges in consumer protection cases, several critical points merit detailed discussion.

First, from the perspective of authority and dispute resolution mechanisms, BPSK normatively holds the authority to resolve consumer disputes at the regional (Level II) level through alternative dispute resolution methods such as conciliation, mediation, and arbitration. This aligns with the principle of resolving disputes outside the court system to ensure a faster, more efficient, and cost-effective process for the parties involved. These mechanisms also empower disputing parties to actively participate in determining the resolution outcome, as evidenced by BPSK's passive role in conciliation and active mediation facilitation. Consequently, BPSK functions not only as a forum for dispute resolution but also as a facilitator of consumer protection by balancing the interests of consumers and business actors.



Second, the provisions governing the submission and rejection of consumer complaints by BPSK clarify the limits of the agency's jurisdiction. Applications may be rejected if they do not fulfill formal requirements or if the subject matter falls outside BPSK's competence. This is crucial to ensuring that consumer dispute resolution proceeds in accordance with applicable legal frameworks and prevents jurisdictional overlaps with other judicial bodies. Moreover, the restriction on legal representation by attorneys reflects BPSK's unique character, promoting a simpler, less formal process that is accessible to consumers who might otherwise face barriers in formal court procedures.

Third, the study highlights practical challenges as illustrated in the Lubuklinggau case, where the dispute concerned the presence of an electricity pole on a consumer's land without permission, raising issues related more to land ownership than consumer protection. This case underscores the importance of correctly applying the consumer definition as stipulated in the Consumer Protection Law to avoid cases being inappropriately handled by BPSK. Proper application of this definition ensures that dispute resolution remains focused on genuine consumer issues and operates within the agency's legal mandate.

Fourth, the absence of the defendant in arbitration proceedings, such as in the Lubuklinggau PLN case, raises concerns about the effectiveness and fairness of the dispute resolution process. Arbitration requires mutual agreement between the consumer and business actor, and the defendant's absence may result in unilateral decisions. Although procedurally valid, such outcomes might undermine substantive justice and the sustainability of consumer-business relationships. This situation calls for strengthened mechanisms to ensure the participation of all parties and for enhanced public awareness of the importance of engaging fully in dispute resolution processes.

Finally, the findings confirm that BPSK plays a significant role in Indonesia's consumer protection system by offering an alternative non-litigation forum. Nonetheless, improvements are needed in coordination between BPSK and formal courts, as well as in increasing public and business understanding of BPSK's functions and jurisdictional boundaries. Clearer regulations and extensive dissemination efforts are essential to optimize dispute resolution efficacy, ensure justice, and enhance consumer protection.

Practically, this study recommends capacity building and training for BPSK officials, expansion of access and facilitation for consumers in filing complaints and participating in mediation, and encouraging business actors to proactively resolve disputes with consumers. Such measures will contribute to fostering harmonious consumer-business relationships, promoting a healthy business climate, and strengthening the overall consumer protection framework.

## CONCLUSION

The authority and procedures for resolving consumer disputes at the Consumer Dispute Resolution Agency (BPSK) are contingent upon fulfilling two fundamental criteria within the scope of its legal mandate. First, the consumer must have experienced a verifiable loss, as determined by an independent assessment body. Second, this loss must arise directly from the consumption of goods and/or the utilization of services produced or traded by the business actor. These elements are explicitly regulated under Law Number 8 of 1999 concerning Consumer Protection, Regulation of the Minister of Trade Number 72 of 2020 regarding the Consumer Dispute Resolution Agency, and the

Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 governing the duties and authorities of BPSK.

A legal analysis of the Lubuklinggau BPSK decision Number: 002/P.Arbitrase/BPSK-Llg/IV/2021, dated April 28, 2021, reveals significant formal deficiencies that contravene the aforementioned regulations. Primarily, the reporting party lacked legal standing as a consumer under the statutory definition. Additionally, the subject matter of the dispute—the ownership and use of land on which an electricity pole was installed—did not fall within the scope of consumer dispute resolution as prescribed by the governing laws. Furthermore, the arbitration process was conducted without the consent of the business actor, thereby undermining procedural fairness and due process. These issues collectively indicate that the decision was not in accordance with the applicable legal framework and thus raises questions regarding its validity.

This conclusion underscores the imperative for strict adherence to statutory provisions defining BPSK's jurisdiction and the necessity for procedural compliance to ensure just outcomes. Enhancing clarity on the limits of consumer disputes and fostering cooperation among parties involved are essential steps toward strengthening the effectiveness and legitimacy of consumer dispute resolution in Indonesia.

### **Acknowledgment**

The suggestion put forward by the author as a response to the results of the research that has been conducted is that changes to the regulations governing the implementation of the duties of the Consumer Dispute Resolution Agency are very necessary because the Decree of the Minister of Industry and Trade Number: 350/MPP/Kep/12/2001 concerning the Duties and Authorities of the Consumer Dispute Resolution Agency is no longer in accordance with the conditions of the relationship between consumers and business actors that occur in the current era of disruption. And it is necessary to harmonize laws and regulations in the field of consumer protection so that in its implementation it does not cause conflicts of norms with other regulations.

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