



(REVIEW ARTICLE)



ENHANCING MEMBER CAPACITY TO STRENGTHEN THE FUNCTIONAL ROLE OF THE CONSUMER DISPUTE RESOLUTION BOARD (BPSK)

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ABSTRACT

The Consumer Dispute Settlement Agency (BPSK) plays a strategic role in protecting consumer rights and resolving disputes between consumers and business actors outside the court system in Indonesia. This study aims to examine the dispute resolution mechanisms employed by BPSK and the relevance of enhancing member capacity to strengthen its functional role. Using a normative legal approach, this study analyzes the legal framework governing consumer protection and the implementation of BPSK's duties and authorities, particularly under Law Number 8 of 1999 concerning Consumer Protection and Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001. The discussion identifies three principal dispute resolution mechanisms: conciliation, mediation, and arbitration, each with distinct procedures and levels of involvement by BPSK members. However, differences in members' professional backgrounds, legal interpretations, and levels of competence may hinder the effective resolution of consumer disputes. Therefore, capacity building through specialized education, training, and inter-member discussions is essential to improve members' legal knowledge, analytical skills, and dispute resolution competencies. Strengthening these capacities is expected to enhance BPSK's effectiveness in providing accessible, efficient, and equitable consumer dispute resolution, thereby supporting the realization of consumer protection objectives in Indonesia.

Keywords: Consumer Protection; Consumer Dispute Settlement Agency (BPSK); Dispute Resolution; Member Capacity Building.

1 INTRODUCTION

Advancements in information technology have brought about changes across various sectors of society, including the patterns of interaction and communication among legal subjects in Indonesia. A particularly evident shift is observed in economic communications, interactions, and transactions involving both goods and services. These changes have altered the volume of economic activity, enabling business operators and consumers to connect without the constraints

of time (*tempus*) or location (*locus*). However, high-volume economic activity does not guarantee high quality. On one hand, this robust economic flow drives national economic progress; on the other, the surge in economic activity is undeniably accompanied by a rise in incidents involving unlawful conduct.

In this context, consumers are frequently the victims of such unlawful acts. Consumers play a vital role in the economy as the purchasers of products or services from businesses. Consequently, it is essential for the government and relevant institutions to protect consumers from detrimental business practices and from products that are unsafe or fail to meet appropriate quality standards.¹ This situation illustrates that consumers often occupy a marginalized position within economic activities; due to limited access to information, technology, education, social resources, and legal recourse, they are highly vulnerable to discrimination. To address this, the Indonesian government sought to strengthen the standing of end consumers in the national economy by enacting Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Law). This was undoubtedly a visionary step aimed at balancing the position of end consumers with that of business actors across various goods and services transactions in Indonesia.

This initiative aligns with the Indonesian national philosophy—embodied in the state foundation of *Pancasila** and the 1945 Constitution which advocates for "developing the whole Indonesian person." The spirit of this philosophy resonates with the core intent of the Consumer Protection Law: to empower consumers while respecting the interests of business actors, which are also accommodated under various other regulations. To give concrete effect to the law's objectives, it explicitly outlines guiding principles and goals; the rights and obligations of both consumers and business actors; prohibited business practices; business liability; the government's role; mechanisms for resolving disputes between end consumers and business actors; and applicable sanctions.

The Consumer Protection Law explicitly stipulates that issues regarding consumer protection may be resolved through two channels: (1) out-of-court dispute resolution, comprising (a) amicable settlement directly between the parties, and (b) resolution via the Consumer Dispute Settlement Agency (BPSK) using conciliation, mediation, or arbitration; and (2) dispute resolution through the court system. Article 37 of the aforementioned Ministerial Decree (Kepmen) 350/2001 stipulates that the BPSK may impose administrative sanctions if the dispute is resolved through arbitration, whereas if the dispute is resolved via mediation or conciliation, the BPSK's decision merely records the written agreement and does not include administrative sanctions.²

The Consumer Dispute Resolution Agency (BPSK) is a non-structural body based in regencies and cities, tasked with resolving consumer disputes outside of the court system. BPSK members are drawn from three sectors: the government, consumers, and business operators. The legal basis for the establishment of the BPSK comprises Articles 49 through 58 of the Consumer Protection Law (UUPK) and the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 regarding the Implementation of Duties and Authority of the Consumer Dispute Resolution Agency (hereinafter referred to as Decree No. 350/MPP/Kep/12/2001), which mandates the establishment of a BPSK in every city or regency. The existence of the BPSK contributes to equitable access to justice—particularly for consumers aggrieved by business operators—by addressing disputes involving relatively small monetary amounts. Such small-scale losses often result in a situation where litigation costs are disproportionate to the value of the claim. Nevertheless, disputes still require resolution, making the BPSK a highly strategic mechanism for settling matters in a simple, rapid, and cost-effective manner.

The role of the BPSK in resolving consumer cases is governed by the Consumer Protection Law, which essentially addresses two key aspects regarding the agency, including:

2. Consumers are not obliged to resolve conflicts or issues through the BPSK; however, BPSK rulings carry significant legal weight in resolving disputes between consumers and business operators. 3. Article 46 Paragraph (1) of Law Number 8 of 1999 states that lawsuits regarding violations by business actors may be filed by several parties, including: an individual consumer, a group of consumers, a qualified non-governmental consumer protection organization, or the government and/or relevant agencies if the goods and/or services consumed or utilized result in significant material loss and/or a large number of victims.

The roles of the BPSK (Consumer Dispute Resolution Agency), which is tasked with handling cases involving consumers and business actors, include the following:

- Handling consumer cases through mediation, conciliation, and arbitration.
- Providing consumer protection consultations.
- Supervising the inclusion of standard clauses.
- Reporting violations of the Consumer Protection Law to investigators.
- Accepting complaints—whether written or oral—regarding various types of violations.
- Conducting case examinations and research related to consumer protection issues.

- Summoning business actors suspected of violating the Consumer Protection Law.
- Presenting expert witnesses, ordinary witnesses, or individuals deemed to have knowledge of violations of the Consumer Protection Law.
- Requesting assistance from investigators to bring in witnesses, expert witnesses, and business actors if they refuse to comply with a BPSK summons.
- Verifying the validity of evidence for investigative purposes.
- Determining whether or not the consumer has suffered a loss.
- Notifying the business actor of any decision regarding a violation.
- Imposing administrative sanctions on business actors who commit violations.

Given the complex role and position of the Consumer Dispute Resolution Body (BPSK) in resolving consumer disputes, it should serve as a viable solution for both consumers and business operators. It is important to note that the BPSK is composed of members representing the government, the business sector, and consumers. These diverse groups naturally bring different backgrounds and varying capacities to the execution of the BPSK's duties and authority.

Based on the foregoing, it is worthwhile to conduct an in-depth study titled "Enhancing Member Capacity to Strengthen the Functional Role of the Consumer Dispute Resolution Body (BPSK)." The topics to be examined include: What are the dispute resolution methods employed by the BPSK? What is the relevance of enhancing member capacity to the functional strengthening of the BPSK?

2 DISCUSSION

2.1 Dispute Resolution Method at the Consumer Dispute Resolution Board

The Consumer Dispute Resolution Body (BPSK) is a supporting state institution based in regencies and cities, tasked with "resolving consumer disputes out of court." Its membership comprises representatives from the government, consumers, and business actors. The BPSK was established to facilitate and expedite the process, and to provide legal certainty for consumers seeking to assert their civil rights against business actors. Furthermore, it serves as a means for both consumers and business actors to obtain information and guarantees of equal legal protection.

As stipulated in Article 3 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, the duties and authority of the BPSK include:

- Handling and resolving consumer disputes through conciliation, mediation, or arbitration;
- Providing consultation on consumer protection;
- Supervising the inclusion of standard clauses;
- Reporting to general investigators any violations of the provisions of Law Number 8 of 1999 concerning Consumer Protection;
- Receiving complaints—whether written or oral—from consumers regarding violations of consumer protection;
- Conducting inquiries and examinations regarding consumer protection disputes;
- Summoning business actors suspected of violating consumer protection laws;
- Summoning and presenting witnesses, expert witnesses, and/or any person deemed to have knowledge of violations of Law Number 8 of 1999 concerning Consumer Protection;
- Requesting assistance from investigators to bring in business actors, witnesses, expert witnesses, or any persons referred to in letters (g) and (h) who refuse to comply with a BPSK summons;
- Obtaining, examining, and/or evaluating letters, documents, or other evidence for the purpose of inquiry and/or examination;
- Determine and establish whether or not a loss has been suffered by the consumer;
- Notify the business actor who has committed a violation regarding consumer protection of the decision;
- Impose administrative sanctions on business actors who violate the provisions of Law Number 8 of 1999 concerning Consumer Protection.

Based on these provisions, it can be broadly understood that the BPSK functions to resolve consumer disputes involving business actors. Shidarta defines a consumer dispute as a dispute concerning the violation of consumer rights. Its scope encompasses all legal aspects civil, criminal, and administrative. Consequently, the term "consumer transaction dispute" is not used, as it implies a narrower scope limited solely to civil law aspects.³ Meanwhile, Az. Nasution posits that a consumer dispute is any disagreement between a consumer and a provider of consumer products (consumer goods and/or services) within the context of a legal relationship between them concerning a specific consumer product.⁴

Furthermore, Article 23 of the Consumer Protection Law stipulates that if a manufacturer and/or distributor refuses, fails to respond to, or fails to provide compensation for a consumer's claim, the consumer has the right to sue the business actor and resolve the resulting dispute through the Consumer Dispute Settlement Body (BPSK) or by filing a lawsuit in the court located where the consumer resides. This is in accordance with the provisions of Article 45 of the Consumer Protection Law, as follows:

- Any aggrieved consumer may sue a business actor through an institution tasked with resolving disputes between consumers and business actors or through the general court system.
- Consumer dispute resolution may be pursued through the courts or out-of-court, based on the voluntary choice of the disputing parties.
- Out-of-court dispute resolution as referred to in paragraph (2) does not eliminate criminal liability as stipulated by law.
- If an out-of-court dispute resolution method has been selected, a lawsuit through the courts may only be pursued if that method is declared unsuccessful by one or all of the disputing parties.

Consumer dispute resolution may be pursued through the courts or out-of-court, based on the voluntary choice of the disputing parties. Consumers may sue business actors in general courts either individually or as a group (class action). Lawsuits against business actors may also be filed by non-governmental consumer protection organizations, the government, and/or relevant agencies if the goods and/or services consumed or utilized have caused significant material loss and/or affected a large number of victims.

In addition to court proceedings, the Consumer Protection Law provides for an alternative consumer dispute resolution mechanism through out-of-court (non-litigation) channels, specifically via the BPSK. The duties and authority of the BPSK, as stipulated in Article 52 of the Consumer Protection Law (UUPK) and the Decree of the Minister of Industry in conjunction with the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, consist of handling and resolving consumer disputes through conciliation, mediation, or arbitration. Any aggrieved consumer may submit a request for consumer dispute resolution to the BPSK, either in writing or orally, through the BPSK secretariat. Such a request may also be submitted by heirs or authorized representatives if the consumer is deceased, ill, elderly, a minor, or a foreign national. Upon receipt of a written request, the BPSK secretariat shall issue an acknowledgment of receipt to the applicant. Applications submitted orally are recorded by the BPSK secretariat using a designated format and must be signed or stamped by the consumer, their heir, or their authorized representative. (Consumers whose legal rights have been infringed but who are unable to appear personally before the BPSK may be represented by an heir or authorized representative in cases where the consumer is deceased, ill, or elderly—rendering them unable to file a complaint personally, either in writing or orally, as evidenced by a doctor's certificate and an Identity Card (KTP)—or is a minor under applicable laws, or is a foreign national.)

Furthermore, pursuant to Article 15 paragraph (3) of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, the applicant is issued a receipt. The application file—whether submitted in writing or orally—is recorded by the BPSK secretariat and marked with a date and registration number. Under Article 16 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, a written application for consumer dispute resolution must accurately and completely include the following:

- The full name and address of the consumer, heir, or authorized representative, accompanied by proof of identity;
- The full name and address of the business actor;
- The goods or services subject to the complaint;
- Proof of acquisition (sales slips, receipts, and other supporting documents);
- Details regarding the place, time, and date the goods or services were acquired;
- Witnesses to the acquisition of the goods or services;
- Photographs of the goods and the performance of the services, if available.

If the application is accepted, the proceedings commence. The Chairperson of the BPSK issues a written summons to the business actor—accompanied by a copy of the consumer dispute resolution application—no later than three (3) working days after the application is received in a valid and complete form. The summons clearly specifies the day, time, and venue of the hearing, as well as the business actor's obligation to submit a written response regarding the consumer dispute resolution at the first hearing; this hearing must be held no later than the seventh (7th) working day following the BPSK's receipt of the application. The Panel convenes on the scheduled day, date, and time, and is required to maintain order throughout the proceedings.

As previously outlined regarding the legal basis of the BPSK and the regulations governing the execution of its duties and authority, consumer dispute resolution within the BPSK is conducted through several methods, including

conciliation, mediation, or arbitration. The term "or" clearly indicates that the available methods constitute a choice (they are alternative rather than cumulative). Consequently, resolving a case via one of these methods precludes a subsequent resolution of the same case within the BPSK using a different method. Therefore, it is essential to understand the nature of and distinctions between these three methods of consumer dispute resolution employed by the BPSK.

Conciliation is an out-of-court consumer dispute resolution process facilitated by the BPSK to bring the disputing parties together, with the actual resolution left to the parties themselves. When handling a consumer dispute through conciliation, the Panel is tasked with:

- Summoning the relevant consumer and business actor;
- Summoning witnesses and expert witnesses if necessary;
- Providing a forum for consumers and business operators regarding laws and regulations in the field of consumer protection;

The procedure for resolving consumer disputes through conciliation is as follows:

- The Panel fully entrusts the dispute resolution process to the consumer and the business operator concerned, regarding both the form and the amount of compensation;
- The Panel acts as a conciliator;
- The Panel accepts the outcome of the deliberations between the consumer and the business operator and issues a decision;

Furthermore, the mediation method is an out-of-court consumer dispute resolution process facilitated by the BPSK acting as an advisor, while the actual resolution is left to the disputing parties. During mediation proceedings, the panel tasked with resolving the dispute has the following duties:

- To summon the disputing consumer and business actor;
- To summon witnesses and expert witnesses if necessary;
- To provide a forum for the disputing consumer and business actor;
- To actively facilitate reconciliation between the disputing consumer and business actor;
- To actively provide advice or recommendations for resolving the consumer dispute in accordance with laws and regulations regarding consumer protection.

The procedure for resolving consumer disputes via mediation is as follows:

- The panel fully entrusts the dispute resolution process to the consumer and business actor involved, regarding both the form and amount of compensation;
- The panel acts actively as a mediator by providing advice, guidance, suggestions, and other measures to resolve the dispute;
- The panel accepts the outcome of the deliberations between the consumer and the business actor and issues a binding decision;

Furthermore, the arbitration method can be understood as an out-of-court consumer dispute resolution process wherein the disputing parties fully entrust the resolution of the dispute to the BPSK. In arbitration-based consumer dispute resolution, the parties select arbitrators from the BPSK membership drawing from representatives of the business sector, the government, and consumers to serve on the panel. The arbitrators selected by the parties then choose a third arbitrator from the BPSK membership specifically a government representative to serve as the panel chairperson. With the permission of the panel chairperson, the consumer and business actor involved may examine all files related to the proceedings and make necessary excerpts.

On the first day of the hearing, the presiding officer must attempt to reconcile the disputing parties; if no settlement is reached, the hearing proceeds with the reading of the consumer's claim and the business actor's written response. The presiding officer grants the disputing consumer and business actor the opportunity to explain the matters in dispute. On this first hearing day, prior to the business actor submitting a response, the consumer may withdraw the claim by issuing a written statement. If the consumer withdraws the claim, the panel must formally announce the withdrawal during the hearing. Should a settlement be reached between the consumer and the business actor during the dispute resolution process, the panel shall issue a ruling in the form of a settlement decree.

If the business actor and the consumer fail to appear on the first hearing day, the panel grants them a final opportunity to attend the second hearing, bringing the necessary evidence. The second hearing must be held no later than five working days after the first hearing, with the BPSK secretariat issuing summonses to both the consumer and the business actor. If the consumer fails to appear at the second hearing, the claim is deemed void by operation of law; conversely, if the business actor fails to appear, the panel grants the consumer's claim in the business actor's absence.

The outcome of consumer dispute resolution via conciliation or mediation is embodied in a written agreement signed by both the consumer and the business actor. This written agreement is ratified by a panel decision signed by the presiding officer and the panel members. Similarly, the outcome of consumer dispute resolution via arbitration is issued as a panel decision signed by the presiding officer and the panel members. The Chairperson of the BPSK shall notify the disputing consumer and business actor in writing of the panel's decision no later than 7 (seven) working days after the decision is pronounced. Within 14 (fourteen) working days of the BPSK decision being notified, the disputing consumer and business actor must declare whether they accept or reject the BPSK decision. A consumer or business actor who rejects the BPSK decision may file an objection with the District Court no later than 14 (fourteen) working days after the BPSK decision is pronounced.

The procedure for filing an objection against a BPSK decision is governed by Supreme Court Regulation Number 1 of 2006 concerning the Procedure for Filing Objections against Decisions of the Consumer Dispute Resolution Body (BPSK) (hereinafter referred to as Supreme Court Regulation No. 1 of 2006). Conversely, if a business actor declares acceptance of a BPSK decision, they are required to execute the decision no later than 7 (seven) working days from the date of declaring such acceptance. A business actor who rejects a BPSK decision but fails to file an objection is deemed to have accepted the decision after the 7-day deadline and is required to execute the decision no later than 5 (five) working days after the objection filing deadline has passed. If the business actor fails to fulfill their obligation, the BPSK shall hand over the decision to investigators to conduct an investigation in accordance with applicable laws and regulations.

A BPSK decision is final and possesses permanent legal force. Regarding the BPSK decision, the BPSK may request an execution order from the District Court located where the aggrieved consumer resides. The concept of execution implies that the losing party refuses to comply with the decision voluntarily, necessitating enforcement through legal authority. Provisions regarding the execution order are also set forth in Article 7 of Supreme Court Regulation No. 1 of 2006.

Article 7 of Supreme Court Regulation No. 1 of 2006 stipulates that a consumer may file an application for the execution of a BPSK decision—against which no objection has been raised—with the District Court located either at the consumer's legal domicile or within the jurisdiction of the BPSK that issued the decision. An application for the execution of a BPSK decision that has undergone objection proceedings is to be determined by the district court that adjudicated the relevant objection.

The district court is required to issue a ruling on the objection no later than 21 (twenty-one) days after the objection is received. The parties may file an appeal to the Supreme Court against the district court's ruling within a maximum period of 14 (fourteen) days. The Supreme Court is required to issue a ruling no later than 30 (thirty) days after receiving the appeal application.

2.2 Relevance of Enhancing Member Capacity to the Functional Strengthening of the Consumer Dispute Resolution Body

Much has already been discussed regarding the duties and authority of the Consumer Dispute Resolution Body (BPSK)—reflecting its functional role in society and its contribution to fostering a balance within both regional and national economies. It is undeniable that the BPSK holds a strategic position in implementing both preventive and remedial measures outside of the formal litigation process. This spirit of balance is also evident in the BPSK's composition, which incorporates the interests and perspectives of various stakeholders; its membership comprises three elements: the government, consumers, and business actors. The inclusion of these elements in the relevant legislation is intended to demonstrate the participation of business actors in consumer protection efforts and to highlight that consumer protection is a shared responsibility between the government and the public. The division of BPSK members into these three elements reflects the concept of balancing the interests of the disputing parties (consumers and business actors) with the interests of the government, which positions itself as a neutral party in the decision-making process.⁵ A closer examination of the formation of the Consumer Dispute Resolution Agency (BPSK) reveals that the selection of its members prioritizes representation of specific stakeholder groups over the actual competence required to manage and resolve disputes; yet, it is undeniable that all BPSK members must possess the necessary competence and a shared perspective when applying dispute resolution methods.

The diverse backgrounds of the various BPSK constituent groups strongly suggest the likelihood of differing perceptions regarding consumer protection and legal interpretation, which can hinder the dispute resolution process. Members representing the business sector—recruited from local business associations or organizations—often hold a strong business-oriented mindset, frequently prioritizing pragmatic economic views to achieve specific objectives. In practice, the requirement that disputes be resolved by a panel comprising a balanced mix of the three constituent groups faces logistical challenges, as individual members have other professional commitments; this situation creates internal operational obstacles. These issues are further complicated by concerns regarding competence, specifically the need to enhance the knowledge and experience of human resources in resolving consumer disputes through the various methods available to the BPSK.

Given the points outlined above, specialized education and training are essential to support BPSK members—and thereby enhance the functional effectiveness of the agency, with its tripartite composition—by building and improving their capacity. Since the BPSK is authorized to resolve consumer disputes through conciliation, mediation, or arbitration (non-litigation processes), resolving such disputes requires specialized expertise in analyzing the cases or issues at hand. The ultimate aim of this line of reasoning is, of course, to ensure that the BPSK functions effectively as a mediator and/or a mechanism for resolving issues outside of litigation. Consequently, the Consumer Protection Law's objective—facilitating the swift, simple, and cost-effective resolution of consumer disputes through the BPSK—can be fully realized.

3 CONCLUSION

- The Consumer Dispute Resolution Agency (BPSK) is a supporting state institution with specific duties and authorities as stipulated in Law No. 9 of 1999 concerning Consumer Protection and the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of the Duties and Authorities of the Consumer Dispute Resolution Agency. The BPSK carries out its function of resolving consumer disputes through several methods. These methods are explicitly stated in the relevant legislation and consist of conciliation, mediation, or arbitration.
- The Consumer Dispute Resolution Agency (BPSK) is composed of members representing three distinct elements: the government, business actors, and consumers. This composition is ideal for capturing the perspectives of the various disputing parties when addressing incoming complaints. To ensure the operational effectiveness of a body comprising these three different elements, it is essential that all members possess the necessary competence regarding the various dispute resolution methods employed by the BPSK; this ensures that the distinctions between the different resolution methods remain clear and are not conflated.

Suggestion

- The public is encouraged to raise their legal awareness regarding the scope of authority of the Consumer Dispute Resolution Body (BPSK) so that they may derive maximum benefit from the body's existence;
- Members of the Consumer Dispute Resolution Body (BPSK) are encouraged to deepen their understanding and engage in more frequent discussions with fellow members to enhance their capacity to distinguish between and implement various dispute resolution methods; such discussions are also crucial for improving their ability to analyze disputes, devise solutions, and formulate positions on the disputes at hand; and
- The government is expected to provide support—regarding both substance and structure—to enhance the capacity of Consumer Dispute Resolution Body (BPSK) members, ultimately aiming to improve the quality and effectiveness of the BPSK's presence within the community.

STATEMENTS ON COMPLIANCE WITH ETHICAL STANDARDS

Disclosure of conflict of interest

The authors declare no conflicts of interest regarding this manuscript.

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