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EFFECTIVENESS OF CONSUMER DISPUTE RESOLUTION AGENCY (BPSK) IN COMPLETING CONSUMER DISPUTE IN INDONESIA

Fransiska Novita Eleanora

ABSTRACT

The research objective is to determine the effectiveness of the consumer dispute resolution agency (BPSK) in resolving consumer disputes or conflicts between the parties, by means of mediation rather than through the court, because mediation is carried out by deliberation, and is fair, fast and also cheap, and confidentiality of the parties the dispute can be maintained, because the mediator does not have the interests and benefits of the parties, be neutral, and peace or find a solution after the decision is final and also binding from the parties and must be carried out because it has been agreed by them as a party to the conflict, the Research Method is a normative juridical in which the approach taken or reviewed based on existing legal material, by examining, the theories, concepts and also the principles of the law of the laws and regulations will be related to this research. However, the obstacle is that the BPSK Decision can still be submitted to the execution of the state court if there are objections from the parties over its decision, even though the provision is not allowed because there are provisions governing it, namely Supreme Court Regulation Number 1 of 2006 concerning Procedure for Filing Objections Against the Decision of the Settlement Agency Consumer Disputes.

Key words: effectiveness, dispute, consumers

INTRODUCTION

In meeting the needs of life of consumers or the community is inseparable from consuming goods and services, but in meeting their needs, there is a dispute or conflict between the seller and the buyer (consumers) when the goods or services purchased or consumed are not as intended and cause losses for victims, so victims report it to the authorities to obtain compensation, law enforcement against consumer disputes provides a perception that the rights of consumers can be realized and realized. However, along with developments, the community has begun to shift in resolving disputes through the channels in outside the court namely by using mediation, where in the settlement through this mediation sought peace between the parties to the dispute.

Technological developments affect goods and services including in carrying out electronic commerce or e-commerce, success in this trade due to the trust of consumers of the quality and quantity of goods in accordance with what was promised, and the existence of protection for consumers in carrying out that trade[1] E-Commerce has opened up opportunities for companies and investors alike, and can also significantly reduce barriers to entry and also costs for business operations[2]the number of cases or disputes that occur to consumers must prioritize the rights of consumers including the protection of data where the English appellate court allows actions to perpetrators in terms of protecting data from consumers[3]

Mediation, Arbitration, Conciliation involves a neutral party that acts as an intermediary and does not have an interest or advantage over the cases[4] as the appointed mediator of the consumer dispute resolution agency (BPSK) which is its task and function based on the provisions of consumer protection, namely law number 8 of 1999, settlement in consumer disputes uses and uses various methods such as the outcome of the case resolution stated in a written agreement , and the decision is final and binding on the parties but what is the obstacle why the BPSK decision can still be submitted to the district court when the parties in question still object to the decision? The consumer dispute resolution agency has advantages over settlement in court, because it is cheap, fast, low cost and resolved by deliberation, so that it gives more legal certainty to the parties to the dispute, because the decision is final and binding on the parties to the dispute, final means that the completion is not done other legal remedies, but the decision of the objection from the disputing party due to the decision of the consumer dispute resolution body is submitted and forwarded to the district court to test whether the decision is in accordance with the parties' wishes or not, it should not be accepted and rejected by the judge of the district court, because it is not there are procedures and legal basis for testing the decision.

But asking the parties to proceed to the Supreme Court because it is therefore the same as violating the credibility of BPSK itself, even though the mediator himself was appointed because of his professional background, clear credibility and trustworthy mediator. Whereas objections to the BPSK decision have been regulated in Supreme Court Regulation Number 1 of 2006

[1] Listen (2019), International The News, Protecting e-consumers, available at, https://www.thenews.com.pk/print/547117-protecting-e-consumers, accesed on, 04 April 2020

[2] ACCP Protecting & Promoting Consumers In ASEAN, Enhancing Consumer Protection in E-Commerce through the Online Dispute Resolution Mechanism available at https://aseanconsumer.org/read-news-enhancing-consumer-protection-in-e-commerce-through-the-online-dispute-resolution-mechanism, accessed on 5 April 2020

[3] Carly, M., (2019) Financial Times, Is Consumer Protection Legislation Fit For Purpose, available at https://www.ft.com/content/3901dd14-ca55-11e9-af46-b09e8bfe60c0 accessed on 3 April 2020

[4] European Commision, Alternative Dispute Resolution For Consumer, avalilable at https://ec.europa.eu/info/live-work-travel-eu/consumers/resolve-your-consumer-complaint/alternative-dispute-resolution-consumers_en accessed on 31 March 2020

concerning Procedures for Filing Objections Against Consumer Dispute Resolution Decisions, whereby the parties who feel objected to the decision may only proceed to the Supreme Court not to the State Court, it should be rejected by the court because the unauthorized authority is the supreme court, for this reason the district court judge must master technical aspects of consumer protection.

FORMULATION OF THE PROBLEM

How is the implementation of the consumer dispute resolution agency in resolving consumer disputes in Indonesia?

RESEARCH METHODS

This study uses a juridical and normative method where this approach uses an approach that is based on the main legal material by examining theories and concepts and legal principles related to and related to this research.

DISCUSSION

CONSUMER DISPUTE RESOLUTION

Law Number 8 of 1999 concerning Consumer Protection, provides facilities in the resolution of consumer disputes, namely:

1. SETTLEMENT THROUGH COURT

In principle, any consumers who feel aggrieved can directly sue business actors through the correct institution tasked with resolving disputes that occur between consumers and business actors or it can also be through institutions of general justice, the authority in resolving disputes that occur to consumers through a court in a general court environment with and also referring to the provisions that do apply to the environment in the general court. This also means that the procedure for filing a lawsuit in the matter of consumer protection also refers to the applicable legal provisions, namely a civil procedure.

2. OUTSIDE THE COURT THROUGH THE CONSUMER DISPUTE RESOLUTION BOARD (BPSK)

The legal basis for the establishment of the Consumer Dispute Settlement Body (BPSK) is Article 49 Paragraph 1 of the UUPK and Minister of Industry and Trade Number 350IMPPIKep / 1212001 which stipulates that BPSK must form a BPSK in each city or regency. In resolving consumer disputes outside the court line, it can be carried out by the Consumer Dispute Resolution Board, who is BPSK? in accordance with the provisions of Article 50 are:

(1) The Government shall establish a Consumer Dispute Settlement Body in the Second Level Region to resolve consumer disputes outside the court.
(2) To be able to be appointed as a member of the Consumer Dispute Settlement Body, it must meet the following conditions:
   a. Citizen of the Republic of Indonesia
   b. Healthy body
   c. Good behavior
   d. Never convicted of a crime
   e. Having knowledge and experience in the consumer field
   f. Be at least 30 (thirty) years old
(3) Members consist of government elements, as well as consumers and business actors
(4) Members have a minimum of 3 (three) people, and a maximum of 5 (five) people
(5) Appointment and dismissal of members of the consumer dispute resolution agency are stipulated by the Minister.

CONSUMER DISPUTE SETTLEMENT AND MEDIATION BOARD

Principles of Mediation Based on the Supreme Court Regulation No. 1 of 2016 regarding Mediation, namely:
a) Mediation is used to settle disputes by negotiation
b) There is a third party, who acts as a mediator where their presence and presence are accepted by the parties to the dispute
c) The task of the mediator is to help the parties to the dispute find a solution or a solution
d) The authority to make decisions is an agreement of the parties in dispute
e) Characteristics of mediation are informal, and private is also voluntary.

Settlement of consumer disputes through mediation by involving an independent body can be used as a guideline for other countries to form an independent institution in voicing the rights of consumers, especially the rights of consumers to enjoy and consume goods and services, consumers must be given protection of their rights if they suffer losses and is entitled to get compensation in accordance with the amount of compensation he experienced[5] If the case is continued or submitted in court, it turns out that it does not give satisfaction to the parties to the dispute. The State can provide direction to settle out of court

[5] ICPEN Protecting consumer worldwide Resolve Dispute available at https://www.icpen.org/resolve-dispute, accessed on 8 April 2020

according to the agreement of the parties, because the State is present to protect its citizens as consumers, thus entrusting to the mediator in resolving consumer disputes. Settlement out of court through mediation or otherwise must be final and binding means that there is confidence from the consumer to resolve the dispute through mediation and anything that has been decided through mediation cannot be raised for objection or execution again.

POLICY ON CONSUMER DISPUTE RESOLUTION AGENCY (BPSK) DECISIONS

Consumer dispute resolution agency is a dispute resolution outside the court line chosen by the parties in resolving the dispute through mediation and the decision is final and binding, and constrained that the decision of the BPPS can still be tested by the district court, with the implication it can reduce the credibility of the institution itself and there is no more trust from the community[6] Besides supporting the judge's understanding of technical protection, there must be other supporting rules such as the rule in court that if there is a choice from the parties that dispute about the bpsk through mediation, a policy must be made that a set of rules for understanding the protection must be made technical resolution of disputes through mediation, in this case related to procedures, procedures, as well as the coordination between the authorities of the district court, the high court and the supreme court regarding the limits of authority which become the authority of each, a judge not only obtains only a law degree, but improvement of human resources and understanding through training to improve consumer protection.

CONCLUSION

Dispute resolution through the consumer dispute resolution agency is the choice of the parties to the dispute because it is cheap, and is carried out by deliberation and the decision is final and binding, but there are still obstacles that the decision is still able to be tested by the district court if it is deemed to impose the disputing party, the provisions should be It does not need to be done because BPPS as an independent institution can only forward objections from the parties to the Supreme Court. For this reason there needs to be a clear understanding between law enforcement in viewing and reviewing decisions related to BPSK, because the impact will reduce the credibility of BPSK itself.

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