



The Role of the Consumer Dispute Resolution Agency (BPSK) Regarding Developer Consumer Rights that are Not Fulfilled

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Abstract

The Consumer Dispute Resolution Agency (BPSK) was established as a solution to avoid resolving consumer disputes through general courts. Proceeding in the general court takes a long time and costs a lot of money, whereas resolving consumer disputes requires fast and cheap procedural law. Consumer Dispute Resolution Agency Provisions in Law Number 8 of 1999 concerning consumer protection which strictly regulates consumer rights that consumers have the right to correct, clear and honest information regarding the actual condition and guarantee of goods/services, of course the Consumer Protection Law accommodating legal certainty for consumers to obtain the rights to everything they want or buy, so that legal certainty for consumers if they do not get clear and correct information from developers or business actors for consumers who buy a house or place to live can be guaranteed if their rights their rights are not fulfilled.

Keywords: BPSK, Consumer, Developer, Consumer Protection.

I. INTRODUCTION

House is one of the basic human needs apart from clothing and food. Every human being needs a decent place to live to support their needs, a place to survive, and a place to share love and affection with their beloved family (Habil & Berlianti, 2023) . So this is the main reason for the large number of developments and offers of apartments or cluster housing that are ready for habitation with various variations and various advantages offered by housing and apartment developers and/or developers to reach consumer targets. In fact, it is not uncommon for consumers to be offered various offers at below market prices to get a livable place with only an affordable down payment and a strategic location to access various public places in big cities (Nurfitri & Dimiyati, 2023) .

Offers with many variations and interesting choices certainly attract consumers to choose and buy according to their tastes, desires and needs, and these various conveniences certainly create instant agreements between consumers and developers as business actors, but often there is legal certainty regarding consumer rights. After the contract, it is often forgotten or even ignored just to seek instant profits or even just as a sweetener to achieve sales targets.

However, as regulated in Article 4 paragraph (3) of Law Number 8 of 1999 concerning consumer protection which strictly regulates consumer rights, consumers have the right to correct, clear and honest information regarding the actual condition and guarantee of goods/services, of course the Law -The Consumer Protection Law accommodates legal certainty for consumers to obtain their rights over everything they want or buy, so that legal certainty for consumers if they do not receive clear and correct information from developers or business actors can be guaranteed if their rights are not fulfilled .

According to the law, developers as developers are referred to as business actors or sellers who are obliged to provide all clear and correct information with all the pluses and minuses to consumers, but as time goes by, marketing information and building specification information often only becomes a sweetener at the beginning which aims to only to attract consumer interest at the start and attract consumer interest to buy, but the truth cannot be confirmed.

The binding between the Developer and the Consumer of course goes through stages, which usually begins with a binding sale and purchase agreement which binds both parties between the Developer and the Consumer, but in practice the Binding Sale and Purchase Agreement cannot be separated from Article 1338 paragraph (1) of the Code. Civil Law which strictly regulates that all agreements made legally apply as law for those who make them, so that the Sale and Purchase Agreement is legally binding on Developers and Consumers, even though many things that happen in the field often seem to be made unilaterally

because one of the parties breaking the agreement.

Disputes between consumers and business actors do not always have to be resolved through a lawsuit in the District Court, but there is an alternative through a Non-Court Settlement Body that can resolve this dispute (Rajagukguk, 2000) . The Consumer Dispute Resolution Agency is certainly the best way for consumers to resolve disputes in a more effective and efficient time period as an alternative to resolving disputes other than in court. The decision of the Consumer Dispute Settlement Agency has final and binding legal force, moreover the decision only needs to be applied for by fiat of execution to the District Court because the BPSK decision does not have executorial force but can be appealed through the District Court. This is confirmed in article 49 paragraph (1) of Law Number 8 of 1999 concerning consumer protection that the nature of the BPSK decision is final and binding.

The Consumer Dispute Resolution Agency is a body tasked with handling and resolving disputes between business actors and consumers (Shofie, 2002) . The Consumer Dispute Resolution Agency (BPSK) is an institution formed and regulated in the Consumer Protection Law, whose main task is to resolve disputes or disputes between consumers and business actors.

The existence of the Consumer Dispute Resolution Agency (BPSK) for consumers in district and city level II areas should be a breath of fresh air and make consumers have confidence in the existence of legal certainty if consumers feel disadvantaged or consumers do not get their rights which can be accounted for according to law, especially for consumers. who are victims of unscrupulous Developers who are unable to fulfill consumer rights as agreed in the Sales and Purchase Agreement. Of course, the rules of the game in Article 1338 of the Civil Code are of course a concern in that the agreement binds both parties to those who make it so that the principle of good faith to balance the rights and obligations of consumers and business actors must of course be realized in order to achieve legal certainty. Including the consumer's right to obtain compensation or compensation for losses suffered by consumers due to non-fulfillment of their rights. Consumers have great hopes that the legal certainty contained in Law Number 8 of 1999 concerning consumer protection can be realized for consumers.

Based on the description above, the problems and statements in this research include the following:

1. What is the legal force of the determination of the Consumer Dispute Resolution Agency (BPSK) in providing legal certainty for Developer consumers whose rights are not fulfilled?
2. What is the role and authority of the Consumer Dispute Resolution Agency (BPSK) to resolve disputes between consumers and business actors?

The focus of this research is to explain the role, authority and legal force of BPSK decisions and/or determinations in providing influence and certainty for the parties to the dispute, especially consumers who buy houses through developers.

Literature Review

Legal Certainty Theory

According to Gustav Radbruch (1952) , legal certainty is a positive thing that is able to regulate the interests of every human being in society and must always be obeyed, even though positive law is considered unfair. Furthermore, legal certainty is a certain condition, provisions or regulations. Gustav Radbruch's opinion in Leawoods (2000) regarding legal certainty is based on his view regarding legal certainty, which means legal certainty itself. Gustav Radbruch stated that legal certainty is a product of law or, more specifically, a product of legislation.

Legal certainty is a situation where human behavior, whether individuals, groups or organizations, is bound and within the corridors outlined by legal rules. The principle of legal certainty is needed in the creation of legislative regulations because legal certainty is the main principle of various kinds of principles of legal supremacy which according to Kordela (2008) "The legal certainty as the superior principle of the system of formal principles of the rule of law justifies the legal validity of a defined group of values" (Indratanto, 2020) .

Authority Theory

According to Mirriam Budiardjo, it is the power of a legal entity, the ability to carry out legal actions, where these actions are carried out with the intention of causing legal consequences, and include things that disappear and the emergence of certain legal consequences. Rights which mean freedom to carry out or not carry out certain actions or demand that other parties carry out certain actions (Budiardjo, 2014: 63) .

According to Elly M Setiadi and Usman Kolip, authority is a moral principle that is in line with norms and values in carrying out public decisions and has a big impact on the making and practice of public decisions. A person who has authority certainly has moral principles to be able to make and implement public decisions. The authority inherent in a person is not just possession and ability to control the attitudes of other parties (Setiadi & Kolip, 2013: 162).

II. METHODS

In writing this research the author used a normative juridical approach. The normative juridical approach is a qualitative approach (not in the form of numbers) (Amirudin, 2010). This approach is carried out based on basic legal materials by examining theories, concepts, legal principles and statutory regulations related to this research. The method used in this research analysis is the analytical descriptive method, the descriptive research method is research that aims to provide as accurate data as possible about the state of the research object (Sugiyono, 2018). In this research the author analyzes the data that has been collected, then draws conclusions and provides an overview of the results that have been analyzed (Nasution, 2008).

III. RESULTS AND DISCUSSION

Legal Basis for the Establishment of a Consumer Dispute Resolution Body

The legal basis for the formation of BPSK is Article 49 Paragraph 1 UUPK and Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001 which regulates that in every city or district a BPSK must be established. The Consumer Dispute Resolution Agency (BPSK) was established as a solution to avoid resolving consumer disputes through general courts. Proceeding in the general court takes a long time and costs a lot of money, whereas resolving consumer disputes requires fast and cheap procedural law.

Authority of the Consumer Dispute Resolution Body

The authority of the Consumer Dispute Resolution Body (BPSK) is regulated in Article 52 UUPK jo. SK. Minister of Industry and Trade Number 350/MPP/Kep/12/2001 dated 10 December 2001 concerning Implementation of the Duties and Authorities of the Consumer Dispute Resolution Agency, namely:

1. Carry out handling and resolution of consumer disputes by means of conciliation, mediation and arbitration;
2. Providing consumer protection consultation;
3. Supervise the inclusion of standard clauses;
4. Report to the general investigator if there is a violation of the Consumer Protection Law (UUPK);
5. Receive written or non-written complaints from consumers regarding violations of consumer protection;
6. Conduct research and examination of consumer protection disputes;
7. Summoning business actors suspected of having committed violations of consumer protection;
8. Summon and present witnesses, expert witnesses and/or anyone suspected of having knowledge of violations of the Consumer Protection Law;
9. Request assistance from investigators to present witnesses, expert witnesses, or any person in point g and h who is unwilling to comply with the summons of the Consumer Dispute Resolution Agency (BPSK);
10. Obtain, examine and/or assess letters, documents or other evidence for investigation and/or examination;
11. Decide and determine whether there is any loss on the part of the consumer;
12. Notify decisions to business actors who violate consumer protection;
13. Imposing administrative sanctions on business actors who violate the provisions of the Consumer Protection Law (UUPK)

By referring to Article 49 paragraph (I) and Article 54 paragraph (I) of the Consumer Protection Law (UUPK) jo. Article 2 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, the main function of the Consumer Dispute Resolution Agency (BPSK), namely: as a legal instrument for resolving disputes outside the court (Sembiring, 2011).

Procedures for Dispute Resolution at the Consumer Dispute Resolution Agency

The procedure for resolving disputes at BPSK is as follows: BPSK only handles civil cases which generally involve direct compensation experienced by consumers due to errors/negligence of business actors. Dispute resolution at BPSK is carried out by: conciliation, mediation and arbitration.

Consumers can of course submit a written request addressed to the Chair of the BPSK in the relevant jurisdiction, then after submitting the request, the dispute resolution process at BPSK is as follows:

Completion Steps at BPSK:

1. Determine the Type of Dispute
 - a. In accordance with the authority of BPSK
 - b. Disputes between perpetrators and final consumers
 - c. Carrying out qualifications: business actors and final consumers
2. The party filing the lawsuit
 - a. A consumer who is harmed or the heir concerned
 - b. Carrying out qualifications: consumers
3. Define Forum
 - a. A if the contract has agreed on the choice of forum.

- b. The parties agree whether the dispute that arises will be resolved through the PN or BPSK
 - c. Gives absolute authority to the selected forum.
 - d. There must be an agreement
4. Determine how to resolve disputes
 - a. The parties agree on how to resolve the dispute: arbitration, mediation, conciliation.
 - b. There must be an agreement
 5. Assign Registrar
 - a. The clerks come from members of the Secretariat for clerkships who are appointed by a letter of appointment from the Chair of the BPSK
 - b. Make a letter determining the appointment of a clerk.
 6. Inspection Process
 - a. Arbitration → Select Arbitrator
 - b. Mediation → Select Mediator
 - c. Conciliation → Select Conciliator
 7. Decision
 - a. Arbitration → Award by Arbitrator
 - b. Mediation → Decision based on agreement of the parties
 - c. Conciliation → Decision based on agreement between the parties

Strength of Decisions of the Consumer Dispute Resolution Agency (BPSK)

Article 42 paragraph (1) of the Republic of Indonesia Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001 of 2001 states that the BPSK decision is a final decision and is binding on the parties so that the parties must in good faith carry out what has been agreed upon. In order for the decision to become an executory decision, the decision can be requested for execution in the district court. It is final, meaning there are no appeals or cassation.

As regulated in Article 56 Paragraph (2) UUPK states that parties can submit objections to the district court no later than 14 working days after notification of the BPSK decision. By opening the opportunity to submit objections, it can be concluded that the BPSK decision is still not final. The party who objects to the decision obtained must submit an objection to the District Court, but the party cannot file an appeal, but rather a cassation to the Supreme Court. For this reason, the Supreme Court has issued regulations. The following is an example of canceling a BPSK decision:

1. RI Supreme Court Decision number 36/Pdt.Sus-BPSK/2016/PN.Tjb
2. Supreme Court Decision number 42K/Pdt.Sus/2013;
3. Supreme Court Decision number 336K/Pdt.Sus/2012 dated 25 July 2012'
4. Supreme Court Decision number 94K/Pdt.sus/2012 dated 25 May 2015
5. Supreme Court Decision number 208K/Pdt.sus/2012

IV. CONCLUSIONS

Based on the results of the discussion, the following conclusions can be drawn:

1. That the BPSK decision is not final and binding. Article 42 paragraph (1) of the Republic of Indonesia Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001 of 2001 states that the BPSK decision is a final decision and is binding on the parties, contrary to the facts. Article 56 Paragraph (2) of the UUPK strictly regulates that parties submit objections to the District Court, but parties cannot submit legal appeals, but rather cassation to the Supreme Court. For this reason, the Supreme Court has issued regulations. The following is an example of canceling a BPSK decision:
 - a. RI Supreme Court Decision number 36/Pdt.Sus-BPSK/2016/PN.Tjb
 - b. Supreme Court Decision number 42K/Pdt.Sus/2013;
 - c. Supreme Court Decision number 336K/Pdt.Sus/2012 dated 25 July 2012'
 - d. Supreme Court Decision number 94K/Pdt.sus/2012 dated 25 May 2015
 - e. Supreme Court Decision number 208K/Pdt.sus/2012
2. That Article 49 paragraph (I) and Article 54 paragraph (I) of the Consumer Protection Law (UUPK) jo. Article 2 Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, is the main function of the Consumer Dispute Resolution Agency (BPSK), namely: as the main legal instrument for resolving disputes outside the court (BPSK) and every consumer can submit a request accompanied by evidence. proof if they experience losses as a result of the actions of business actors, especially developers who do not carry out their obligations;

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