

Legal Reform the Meaning of Final and Binding Decisions of the Consumer Dispute Resolution Agency (Review of the Consumer Protection Act and Supreme Court Cassation Decision)

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Abstract

Consumer disputes in Indonesia can be resolved outside the court system through the Consumer Dispute Settlement Agency (BPSK), which issues decisions considered final and binding. Despite this, the legal framework permits objections to these decisions at the District Court, and further appeals to the Supreme Court, leading to considerable legal uncertainty. This research seeks to clarify the true nature of final and binding as applied to BPSK decisions under Article 54(3) of Law 8/1999. Utilizing a normative juridical approach with both statute and case law analysis, the study highlights a critical inconsistency: the finality of BPSK decisions does not align with the finality of Constitutional Court decisions. While regulations such as Kepmen 350/2001 and Perma 1/2006 were introduced to address these issues, BPSK still encounters practical difficulties in implementing Law

8/1999 effectively. The urgency of this research is underscored by the ongoing legal ambiguity surrounding BPSK decisions, which undermines public confidence and the effectiveness of the dispute resolution process. The findings reveal that despite regulatory attempts, the current legal framework fails to provide the necessary clarity and consistency. To address these challenges and enhance legal certainty for the public, this study advocates for a revision of the Consumer Protection Act (UUPK). Such a revision would ensure a more coherent and reliable framework for final and binding decisions by BPSK, thereby improving the overall efficacy of consumer dispute resolution in Indonesia.

Keywords

BPSK, BPSK Decision, Final and Binding, Consumer Dispute Resolution Agency

Introduction

In accordance with economic development and advancements in science and technology, it promotes the expansion of transactions in freely marketed goods and services that can be consumed by consumers throughout the country. This development has a positive impact on consumers as it makes it easier for them to fulfill their needs for goods and services and provides them with more options. However, it is important to note that this does not necessarily exclude the possibility of creating a discord between the positions of business actors and consumers, which could potentially lead to a dispute.¹

Disputes in society can be resolved through litigation or non-litigation methods. Dispute resolution outside of court is taken to avoid lengthy and complicated mechanisms and to avoid interference from other parties outside the authority to adjudicate.² The Consumer

¹ Tami Rusli, "Penyelesaian Sengketa antara konsumen dan pelaku usaha menurut peraturan perundang-undangan." *Keadilan Progresif* 3, no. 1 (2012): 87-102.

² S. Sahnun. "Pilihan Hukum Penyelesaian Sengketa Tanah di Luar Pengadilan (Studi Kasus Tanah Rowok, Lombok Tengah, NTB)." *Mimbar Hukum* 27, no. 3 (2015): 404-417.

Dispute Resolution Agency (BPSK) is one of the out-of-court (non-litigation) institutions that resolves consumer disputes between consumers and business actors. It is based on Law Number 8 of 1999 concerning Consumer Protection (UU 8/1999).³

The meaning of consumer disputes is not explicitly defined in Law 8/1999. However, Article 1 number 8 of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 outlines that consumer disputes refer to conflicts between business actors and consumers who seek compensation for damage, pollution, or losses resulting from the consumption of goods or services. According to Article 54, paragraph (3) of Law 8/1999, the decision made by the panel is both final and binding. 'Final' indicates that the dispute resolution process has ended or been completed, while 'binding' means that the party obligated to do so must carry out the decision.⁴

Article 56 paragraph (2) of Law 8/1999 states that parties who disagree with the BPSK decision may submit an objection to the District Court within 14 working days of receiving notification of the decision. This is also regulated in Article 7 and Article 41 paragraph (3) of Ministerial Decree 350/2001. According to Article 58 paragraph (2) of Law 8/1999, parties have the right to appeal the decision of the District Court to the Supreme Court of the Republic of Indonesia. This has been demonstrated by the numerous BPSK decisions that have been overturned by both the District Court and the Supreme Court. Additionally, with regards to the execution of BPSK decisions, the decision can be requested from the District Court where the consumer suffered the loss, as stated in Article 57 of Law 8/1999. From this description, it is evident that if there is an objection to the final and binding decision of BPSK, it can be submitted to the District Court.

³ Surya Muhammad Gunarsa, "Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen Terkait Keberatan dan Pembatalan Putusan Arbitrase Sebagai Alternative Dispute Resolution dalam Penyelesaian Sengketa Konsumen." *SASI* 25, no. 2 (2019): 160-172.

⁴ Daniel Kristiyanto, "Menggugat Sifat Final dan Mengikat Putusan Badan Penyelesaian Sengketa Konsumen (BPSK)." *Jurnal Ilmu Hukum: ALETHEA* 1, no. 2 (2018): 128-141. See also Nurul Fibrianti, et al. "Legal Culture and Legal Consciousness of Consumers: The Influence on Regulation and Enforcement of Consumer Protection Laws." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1267-1310.

Additionally, an appeal can be made to the Supreme Court against the decision of the District Court. Therefore, in practice, BPSK cannot guarantee legal certainty for consumers. If disputes are resolved outside of court through BPSK, consumers still have the option to pursue litigation through the court system.⁵

The BPSK decision may not be considered final and binding due to conflicting provisions with Article 56 paragraph (2) and Article 58 paragraph (2) of Law 8/1999. Dissatisfied parties still have the opportunity to file an objection with the court and even appeal to the Supreme Court. The decision made by BPSK is not final and binding as it lacks executorial power. This is evidenced by the fact that its decision requires a request for execution from the District Court. The focus of this research is on the regulation of final and binding BPSK decisions, specifically in relation to the uncertainty of Article 54, paragraph (3) of Law 8/1999.

This research uses normative juridical research methods, namely research carried out by researching and studying law as norms, rules, principles, principles, doctrines, and legal theories as well as other literature using legal material sources in the form of statutory regulations, court decisions, or decrees, contracts or agreements, concepts, theories, principles, and legal principles as well as expert opinions to answer problems related to this research.⁶

This research uses a Statute Approach and a Case Approach. The Statute Approach is a research approach method carried out by examining all laws and regulations that are relevant to the legal problem being handled. Meanwhile, the Case Approach is a research approach carried out by reviewing cases related to legal issues and problems faced and which have become court decisions that have permanent legal force.⁷

⁵ Gunarsa, "Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen Terkait Keberatan dan Pembatalan Putusan Arbitrase Sebagai Alternative Dispute Resolution dalam Penyelesaian Sengketa Konsumen."

⁶ Muhaimin Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

⁷ Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif dan Pendekatan Normatif Sosiologis dalam Penelitian Ilmu Hukum." *Pranata Hukum* 6, no. 2 (2011): 117-132.

Legal materials obtained by the author will be analyzed using descriptive data analysis techniques with grammatical and systematic interpretations. Grammatical interpretation is a method of interpreting the meaning of statutory provisions by explaining them in common, everyday language. This method can also be called the method of interpretation according to language or the objective method. Systematic interpretation is a method of interpreting statutory regulations by connecting them with legal regulations or other laws or with the entire legal system so that they cannot deviate or leave the statutory system or legal system.⁸

Final and Binding Meaning of Article 54 Paragraph (3) of Law 8/1999

The Constitutional Court is a judicial institution that has the authority to adjudicate at the first and last level whose decisions are final to review laws against the Constitution, decide disputes over the authority of state institutions whose authority is granted by the Constitution, decide on the dissolution of political parties, and decide disputes regarding general election results. Apart from that, in the explanation of Article 10 paragraph (1) of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court, it is stated that the final nature of the Constitutional Court's decision in this Law also includes binding legal force (final and binding).⁹ By the final and binding nature of its decision, this means that the Constitutional Court as an Indonesian judicial institution does not provide a tiered judicial process.

Based on the Big Indonesian Dictionary, the word "*final*" means the last stage (round) of a series of examinations (work, competition); the completion stage. Meanwhile, the word "*binding*" has the meaning of tightening, and uniting. From this understanding, it can be concluded that the meanings of the words "*final*" and "*binding*" are interrelated, meaning the end of a series of examinations, which have

⁸ Sryani Ginting, "Interpretasi Gramatikal Sistematis Historis Kasus Dugaan Penodaan Agama Oleh Ahok." *Law Pro Justitia* 2, no. 2 (2017): 61-75.

⁹ M. Agus Maulidi, "Menyoal Kekuatan Eksekutorial Putusan Final dan Mengikat Mahkamah Konstitusi: Questioning the Executorial Force on Final and Binding Decision of." *Jurnal Konstitusi* 16, no. 2 (2019): 339-362.

the power to tighten or unite all wills that cannot be denied. This meaning, when linked to the final and binding nature of the Constitutional Court's decision, means that all possibilities for taking legal action have been closed. By pronouncing the decision in the plenary session, at that time a legally binding force (*verbindende kracht*) was born.¹⁰

When compared with the decision of the Constitutional Court, the decision of the Consumer Dispute Settlement Agency (hereinafter referred to as BPSK) is also final and binding based on Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection (UU 8/1999). However, against the BPSK decision, which is final and binding, legal objections can still be submitted to the District Court as stated in Article 56 paragraph (2) of Law 8/1999 and which is also mentioned in Article 7 paragraph (2) jo. Article 41 paragraph (3) Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency (Kepmen 350/2001). And against the District Court's decision, cassation can still be submitted to the Supreme Court based on Article 58 paragraph (2) of Law 8/1999. This of course causes Article 54 paragraph (3) of Law 8/1999 to be inconsistent and creates legal uncertainty.

The parties to a dispute have been given 2 (two) ways by Law 8/1999 to resolve disputes, namely through court (litigation) and outside court (non-litigation). BPSK is an institution established by the government to resolve consumer disputes outside of court based on Article 49 paragraph (1) of Law 8/1999 while resolving consumer disputes through court refers to the general court provisions that apply based on Article 48 of Law 8/1999. BPSK was formed to be able to resolve consumer disputes in a fast, easy, and low-cost manner because decisions decided by BPSK must be issued no later than 21 (twenty-one) working days after the lawsuit is received, the administrative procedures and decision-making process are very easy and simple. can be done without a legal representative, and the court costs are very cheap

¹⁰ Malik Malik, "Telaah Makna Hukum Putusan Mahkamah Konstitusi yang Final dan Mengikat", *Jurnal Konstitusi* 6, no. 1 (2009): 79-104.

and affordable for consumers.¹¹ Dispute resolution outside of court using BPSK can be achieved using mediation, conciliation, or arbitration which can be chosen based on the agreement of the parties to the dispute and is not a tiered dispute resolution.

BPSK decisions as a result of resolving consumer disputes outside of court are final and binding based on Article 54 paragraph (3) of Law 8/1999. This indicates that consumer dispute resolution has been completed and ended and must be implemented. However, this is in stark contrast to Article 56 paragraph (2) of Law 8/1999 which states that the BPSK decision can still be objected to by the parties to the District Court. This provision is completely inconsistent with the principle of "*res judicata pro veritate habetur*" where a decision for which legal action is no longer possible is declared to be a decision that has definite legal force. So, the BPSK decision cannot provide legal certainty in protecting consumers where in the end disputes between business actors and consumers are resolved by the court or through litigation.¹²

If we examine it further and connect it with the provisions of Article 41 Paragraph (3) of Ministerial Decree 350/2001 which states that parties who reject the BPSK decision can submit an objection to the PN no later than 14 (fourteen) working days after the BPSK decision is notified, then it can be seen that the term It turns out that the final BPSK decision is only interpreted as an appeal, but does not include an attempt to file an objection to the District Court, which about the District Court's decision, Law 8/1999 and Ministerial Decree 350/2001 still opens up the opportunity to file an appeal to the Supreme Court. The term objection is deliberately used to avoid giving the impression of being the same as an appeal. However, the word objection is confusing, especially in the early stages of implementing Law 8/1999 because Article 54 paragraph (3) of the UUPPK stipulates that the decision of the BPSK panel is final and binding.¹³

¹¹ Muhammad Alfian, "Menggugat Sifat Final dan Mengikat Putusan Perlindungan Konsumen." *Amnesti: Jurnal Hukum* 1, no. 2 (2019): 26-46.

¹² Varel Tristan Ayub Laikodot, and Suherman Suherman. "Problematika Undang-Undang Perlindungan Konsumen Terkait Kepastian Hukum Terhadap Keputusan Badan Penyelesaian Sengketa Konsumen." *Justitia: Jurnal Ilmu Hukum dan Humaniora* 8, no. 6 (2021): 1429-1439.

¹³ Maryanto Maryanto, *Prosedur Penyelesaian Sengketa Konsumen di BPSK (Badan Penyelesaian Sengketa Konsumen)* (Semarang: UNISSULA Press, 2019).

In essence, the term objection in the sense of procedural law in court is the same as the meaning of appeal or cassation in legal proceedings. During the process of submitting objections, whether in appeal or cassation, the status of the decision is still said to not have definite legal force (*inkracht van gewijsde*) so the decision is not yet binding and cannot be implemented. The provisions in Article 56 paragraph (2) and Article 58 paragraph (2) are in direct conflict with the nature of BPSK decisions which are final and binding. By opening the opportunity to submit an objection, it can be concluded that the BPSK decision is not final, whereas binding means compelling and must be carried out by the obligated party. Therefore, the regulation of legal remedies related to BPSK decisions is contradictory and inconsistent between the provisions of Article 54 Paragraph (3) of Law 8/1999 and the provisions of Article 56 Paragraph (2) and Article 58 Paragraph (2) of Law 8/1999.¹⁴

Supreme Court Decision Regarding Cassation Application for Decision of the Consumer Dispute Resolution Agency (BPSK)

Article 56 paragraph (2) jo. Article 58 paragraph (2) of Law 8/1999 resulted in many BPSK decisions being objected to by the District Court and even annulled by the Supreme Court. Based on research, it can be seen that in the 2021-2022 period, there were 31 (thirty-one) decisions that have been appealed to the Supreme Court as shown on Table 1.

TABLE 1. Comparison of Supreme Court Decisions

Year	BPSK Decision Number	Supreme Court Decision Number	BPSK Competencies		About the lawsuit
			Competence	Not Competence	
2021	007/PK-ARB/BPSK/VII/2020	118 K/Pdt.Sus-BPSK/2021		√	Default
	008/PK-ARB/BPSK/VII/2020	136 K/Pdt.Sus-BPSK/2021		√	Default

¹⁴ Sutowibowo Sutowibowo, “Kekuatan Putusan Final dan Mengikat Serta Pelaksanaan Eksekusi Putusan Badan Penyelesaian Sengketa Konsumen (BPSK)”, *Jendela Informasi Hukum di Bidang Perdagangan* (2014): 24-30.

Year	BPSK Decision Number	Supreme Court Decision Number	BPSK Competencies		About the lawsuit
			Competence	Not Competence	
	011/BPSK-BKS/2020	175 K/Pdt.Sus-BPSK/2021	√		Consumer Disputes
	132/Pts/Arbt/BPSK/VIII/2020	368 K/Pdt.Sus-BPSK/2021		√	Debt and Receivable Agreement
	002/P.Arbitrase/BPSK-Llg/XI/2021	490 K/Pdt.Sus-BPSK/2021		√	Agreement
	18/Pdt.S-Brg/BPSK-GRT/IX/2020	504 K/Pdt.Sus-BPSK/2021	√		Consumer Disputes
	695/Arbitrase/BPSK-MDN/2015	558 K/Pdt.Sus-BPSK/2021		√	Financing
	028/PK/BPSK/XII/2020	585 K/Pdt.Sus-BPSK/2021		√	PPJB
	057/BPSK-KRW/XI/2020	586 K/Pdt.Sus-BPSK/2021		√	Credit Agreement
	13/Pdt.Kons/2020/BPSK.Bdg	652 K/Pdt.Sus-BPSK/2021		√	Debt and Receivable Agreement
	018/PK-ARB/BPSK/IX/2020	653 K/Pdt.Sus-BPSK/2021		√	PPJB
	61/BPSK-KRW/I/2021	846 K/Pdt.Sus-BPSK/2021		√	Credit Agreement
	31/Pts.BPSK/BPSK/X/2020	873 K/Pdt.Sus-BPSK/2021		√	Financing
	073/Arbitrase/2020/BPSK.Mdn	1112 K/Pdt.Sus-BPSK/2021		√	Default
	05/BPSK/II/2021	1113 K/Pdt.Sus-BPSK/2021		√	Default
	10/PTS/BPSK-PDG/ARBT/III/2021	1389 K/Pdt.Sus-BPSK/2021		√	Financing
2022	13/PTS/BPSK-PDG-SBR/ARBT/V/2021	1 K/Pdt.Sus-BPSK/2022	√		Consumer Disputes
	11/PTS/BPSK-PDG/ARBT/III/2021	2 K/Pdt.Sus-BPSK/2022		√	Financing
	005/P.Arbitrase/BPSK-Llg/XI/2021	420 K/Pdt.Sus-BPSK/2022		√	Agreement
	082/Arbitrase/2020/BPSK	509 K/Pdt.Sus-BPSK/2022		√	Default
	209/P/BPSK Jbr/10/2021	521 K/Pdt.Sus-BPSK/2022		√	Financing

Year	BPSK Decision Number	Supreme Court Decision Number	BPSK Competencies		About the lawsuit
			Competence	Not Competence	
	009/G/BPSK.Kabsi/X/2021	628 K/Pdt.Sus-BPSK/2022		√	Financing
	57/BPSK/PTS/XI/2021	743 K/Pdt.Sus-BPSK/2022		√	PPJB
	048/Arbitrase/2021/BPSK.Mdn	761 K/Pdt.Sus-BPSK/2022	√		Consumer Disputes
	188/41/BPSK-SBY/KPTS/XII/2021	792 K/Pdt.Sus-BPSK/2022		√	Default
	19/Pts/BPSK-PDG/SBR/ARBT/X/2021	852 K/Pdt.Sus-BPSK/2022		√	Agreement
	12/SKT-ABR/2022/BPSK.Kdr	1083 K/Pdt.Sus-BPSK/2022		√	Credit Agreement
	012/Arbitrase/2022/BPSK-Autar	1202 K/Pdt.Sus-BPSK/2022		√	Agreement
	014/Arbitrase/2021/BPSK.Medan	1290 K/Pdt.Sus-BPSK/2022		√	Financing
	081/Arbitrase/2021/BPSK.Mdn	1291 K/Pdt.Sus-BPSK/2022		√	Agreement
	075/Arbitrase/2021/BPSK.Mdn	1342 K/Pdt.Sus-BPSK/2022		√	PPJB

Sources: Authors, 2023 (edited)

Based on Table 1, it is known that of the 31 (thirty-one) decisions in 2021-2022 that reached the cassation stage to the Supreme Court, there were 18 (eighteen) BPSK decisions that were canceled, 6 (six) BPSK decisions that were not canceled, as well as 7 (seven) BPSK decisions which were not annulled but stated in their ruling that BPSK had no authority to examine and adjudicate these cases. The BPSK decision which stated that it does not have the authority to examine and adjudicate the case is a BPSK decision made by arbitration. Article 54 Paragraph (1) letter a of the Arbitration Law and APS regulates that an arbitration award must have a head of decision or *irah-irah* which reads as follows: "*FOR JUSTICE BASED ON THE ALMIGHTY GOD.*" Article 2 Paragraph 1 of Law Number 48 of 2009 concerning Judicial Power also states that trials are carried out "*FOR THE SAKE OF JUSTICE BASED ON THE ALMIGHTY GOD*". This is by Article 29 of the 1945 Constitution which determines that the State is based on the belief in One Almighty God and the State guarantees the

freedom of every person to adhere to their religion and worship according to their religion and beliefs. The inclusion of the head of the decision or *irah-irah* gives executorial power to the decision. Thus, if a court decision or arbitration award does not have the head decision or *irah-irah* "FOR JUSTICE BASED ON THE ALMIGHTY GOD", it will result in the decision being null and void. The provisions of these articles are different from the provisions in Article 57 of Law 8/1999 which stipulates that the decision of the BPSK panel is requested for execution to the District Court where the consumer has suffered the loss. This means that for a BPSK decision to be executed, the BPSK decision must first be requested for execution by the District Court. The Law 8/1999 also does not stipulate the requirement that a BPSK decision must include the head of the decision or *irah-irah* "FOR JUSTICE BASED ON THE ALMIGHTY GOD". Therefore, the BPSK decision does not need to be annulled because it does not meet the requirements as a court decision and has been declared null and void along with the Supreme Court's statement stating that the BPSK has no authority to examine and try cases.¹⁵

The PERMA drafting team on Procedures for Filing Objections to BPSK Decisions stated that the Bandung City BPSK had submitted a fiat of execution against the BPSK decision Number 66/Pts-BPSK/VII/2005 to the Central Jakarta District Court, but the Central Jakarta District Court stated that the BPSK decision could not be submitted for a decree of execution. because there is no *irah-irah*, even though in the BPSK decision neither the UUPK nor Ministerial Decree 350/2001 regulates the obligation to include *irah-irah* in the BPSK decision. This can be seen from the position of BPSK which is under the Ministry of Trade, while HIR/RBG and the Judicial Power Law are regulations that apply to judicial institutions.¹⁶

¹⁵ Dimas Auliya Fikri Bil Fi'li, "Disparitas Putusan Mahkamah Agung Tentang Kewenangan Badan Penyelesaian Sengketa Konsumen (BPSK) dalam Menyelesaikan Sengketa Pembiayaan Konsumen". *Thesis* (Malang: Universitas Brawijaya, 2018).

¹⁶ Yussy Adelina Mannas, "Upaya Keberatan atas Putusan Badan Penyelesaian Sengketa Konsumen ditinjau dari Hukum Acara dan Undang-Undang Perlindungan Konsumen." *Jurnal Hukum Acara Perdata ADHAPER* 1, no. 1 (2015): 91-109.

Apart from that, there are also problems regarding the period for submitting objections, as happened in the case of Supreme Court decision Number 653 K/Pdt.Sus-BPSK/2021. In this case, previously PT. Buana Cipta Propertindo as the applicant for cassation, previously the applicant objected to filing an appeal against the decision of the Batam District Court Number 323/Pdt.Sus-BPSK/2020/PN Btm which in its ruling stated that the applicant's objection request to the Batam City BPSK Decision Number: 018/PK-ARB/BPSK /IX/2020 dated 27 October 2020 cannot be accepted and sentences the applicant to object to pay the court costs incurred in this case amounting to Rp. 416,000.00 (four hundred and sixteen thousand rupiahs) because after the Batam District Court Judge Panel has studied the case files for the objection application regarding the BPSK decision, the Objector Petitioner as a Business Actor in submitting his application did not mention and did not submit evidence when the Batam City BPSK case decision was notified to him, even though the date when the BPSK decision was notified to the Objection Petitioner greatly influences whether or not the objection submitted was made because When submitting an objection to a BPSK decision, there is a period that must be complied with. Then, if it is calculated from the pronouncement of the decision, namely on Tuesday, 27 October 2020, the objection application submitted has exceeded the time limit as determined by Article 5 Paragraph (1) of Supreme Court Regulation Number 1 of 2006 concerning Procedures for Filing Objected to the Decision of the Consumer Dispute Settlement Agency (Perma 1/2006), but in this case the Objector Petitioner was not present when the BPSK decision was pronounced and the objector did not submit case files in the case in question when submitting the objection application, so the Panel of Judges thought that the petition The objection submitted by the Objection Applicant does not meet the formal requirements and therefore should be declared unacceptable.

However, the Supreme Court in its decision Number 653 K/Pdt.Sus-BPSK/2021 thought that Judex Facti PN Batam had applied the law incorrectly because even though the submission of the objection petition had exceeded the time limit determined by Article 5 Paragraph (1) Perma No. 1 of 2006, however, the BPSK's decision was not based on its authority to examine and decide on the dispute, so the Supreme Court thought that the objection request could be granted and then

granted the cassation request from the cassation applicant and canceled the decision of the Batam District Court Number 323/Pdt.Sus-BPSK/2020/PN Btm and Batam City BPSK Decision Number 018/PK_ARB/BPSK/IX/2020. This, of course, contradicts the provisions of Article 5 Paragraph (1) Perma No. 1 of 2006 which regulates that objections can only be submitted no later than 14 (fourteen) days after the business actor or consumer receives the notification of the BPSK decision and Article 6 Paragraph (2) of Perma No. 1 of 2006 which states that objection examinations are only carried out based on BPSK decisions and case files, so of course they cannot provide legal certainty to consumers. This can also lead to the assumption that even though the BPSK decision should already have a permanent legal force that is final and binding so that it can be implemented, it turns out that an objection request can still be submitted even though the period for submitting an objection request has passed so that consumers become increasingly reluctant to resolve their disputes via BPSK.

In addition, of the 31 (thirty-one) BPSK decisions for 2021-2022, 27 (twenty-seven) decisions were declared not within the authority or competence of BPSK by either the District Court or the Supreme Court. The decision was declared not within the authority or competence of BPSK because the main dispute in the decision was a dispute regarding:

1. Default;
2. Debt and Receivable Agreement;
3. Agreement;
4. Financing (Financing Agreement);
5. Sale and Purchase Binding Agreement (PPJB);
6. Credit Agreement.

Of the 31 (thirty-one) decisions, it can also be seen that there are only 4 (four) BPSK decisions that are stated to be BPSK's authority, including:

1. Decision on consumer disputes regarding consumer losses due to delays in delivery of goods by an expedition service;
2. Decision regarding losses to consumers who buy a food product from a business actor that turns out to be an expired product and the business actor cannot prove that the product was not purchased from the business actor, on the other hand, the

consumer can prove that they have indeed purchased the expired food product from businessmen;

3. Decision regarding losses to consumers using electricity services;
4. Decision regarding consumer losses due to using a motor vehicle insurance policy service.

BPSK is a body tasked with handling and resolving consumer disputes. However, Law 8/1999 does not specifically explain the meaning of consumer disputes but the meaning is stated in Ministerial Decree 350/2001, namely disputes between business actors and consumers who demand compensation for damage, pollution, and/or who suffer losses due to consuming goods and/or utilize services. Apart from that, Law 8/1999 and Ministerial Decree 350/2001 have given duties and authority to BPSK in carrying out its functions to handle and resolve consumer disputes outside of court as stated in Article 52 of Law 8/1999 jo. Article 3 Ministerial Decree 350/2001. However, neither Law 8/1999 nor Ministerial Decree 350/2001 regulates or explains in detail the meaning of things that can be called a consumer dispute. Apart from that, Law 8/1999 also does not explain in detail the scope of objections and what kind of policies can be submitted by disputing parties to BPSK decisions, so this can result in various views about the meaning and application of the law for judges and institutions. judiciary as well as consumers and business actors.¹⁷

Another situation that can result in many BPSK decisions being objected to and even annulled is because BPSK members consist of government elements, business actors and consumer elements which causes the appointment of BPSK members to place more emphasis on elemental representation rather than the competence of BPSK members in managing and resolving disputes so that Many BPSK members do not master and understand in depth the subject matter of disputes between business actors and consumers. The different backgrounds of these members can influence differences in perceptions and views regarding consumer disputes and clauses prohibited by Law 8/1999,

¹⁷ Laiskodat and Suherman, "Problematika Undang-Undang Perlindungan Konsumen Terkait Kepastian Hukum Terhadap Keputusan Badan Penyelesaian Sengketa Konsumen".

moreover, neither Law 8/1999 nor Ministerial Decree 350/2001 regulate in detail the meaning or regulation of consumer disputes.

Arrangements for Final and Binding Decisions of the Consumer Dispute Settlement Body (BPSK) Regarding Uncertainty Article 54 Paragraph (3) of Law 8/1999

In the previous discussion, it was stated that based on Article 54 Paragraph (3) of Law 8/1999 the decision of the BPSK assembly is final and binding. However, the BPSK decision cannot truly be said to be a final and binding decision because an objection to the BPSK decision can still be submitted to the District Court, and if an objection is not submitted to the decision to the District Court, the execution of the decision cannot be carried out immediately but rather The order of execution must first be requested from the District Court where the consumer has been harmed because the BPSK decision does not recognize the head of the decision or *irah-irah* "FOR JUSTICE BASED ON THE ALMIGHTY GOD." Apart from that, the actual objection efforts are also not recognized by existing procedural law. Law 8/1999 also does not provide restrictions regarding the conditions or reasons that form the basis for submitting objections to BPSK decisions so it can confuse the public as well as judges and related judicial institutions. Regarding this matter, the Supreme Court has issued Perma 1/2006.¹⁸

Perma 1/2006 was made concerning Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (UU 30/1999) to assist District Courts in handling objection cases submitted to BPSK decisions. Article 6 paragraph (2) Perma 1/2006 states that objection examinations are only carried out based on BPSK decisions and case files. These provisions are the same as the appeal provisions which only require case files. However, several provisions are different from the provisions in Article 30/1999 of Law and there are still several

¹⁸ Gunarsa, "Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen Terkait Keberatan dan Pembatalan Putusan Arbitrase Sebagai Alternative Dispute Resolution dalam Penyelesaian Sengketa Konsumen".

problems in Perma 1/2006. Regarding objections to BPSK decisions which lead to the cancellation of BPSK arbitration decisions in line with Law 30/1999 which regulates that arbitration decisions can only be submitted for cancellation if the decision is suspected to contain the elements mentioned in Article 70 of Law 30/1999, namely:

So the judge at the objection stage must first prove whether or not there is a violation of these elements. The judge should only examine the BPSK decision and the case files. Apart from that, Article 6 paragraph (5) of Perma 1/2006 also regulates that if objections are submitted on grounds other than the provisions of Article 70 of Law 30/1999, the panel of judges can adjudicate the disputed consumer dispute themselves. This article can result in the understanding that there are other reasons outside Article 70 of Law 30/1999 for BPSK decisions being objected to the District Court so that it can lead to counterclaims against consumers and even BPSK and can give rise to the opinion that every BPSK decision can easily be objected to.

Another difference is in the resolution of disputes in BPSK arbitration within 21 (twenty-one) working days which seems to equate consumer dispute resolution procedures through arbitration with procedures for resolving other consumer disputes, even though the form of dispute resolution originating from mediation and conciliation is in the form of an agreement whereas the form of arbitration dispute resolution is a decision. Apart from that, the selection of arbitrators by each party in Law 8/1999 is only limited to representatives of each party in the case, namely from the consumer element and the business actor element. Meanwhile, the third arbitrator is appointed as a government representative whose position is lower so that he can ask for his superior's consideration in making a decision. Meanwhile, in arbitration Law 30/1999, the arbitrator or arbitration panel is appointed by the parties according to the disputed area and the decision can be justified.¹⁹ In addition, arbitration awards in Law 30/1999 must include the head of the decision or irah-irah "FOR JUSTICE BASED ON THE

¹⁹ Elza Syarief, and Shelvi Rusdiana. "Penerapan Prinsip Arbitrase dalam Penyelesaian Sengketa Konsumen Ditinjau dari Undang-Undang Nomor 8 Tahun 1999 dan Undang-Undang Nomor 30 Tahun 1999." *Journal of Law and Policy Transformation* 1, no. 2 (2016): 79-109.

ALMIGHTY GOD". The head of the decision or irah-irah gives executorial power to a decision.

In essence, the problem regarding the inclusion of irah-irah is caused by BPSK carrying out handling and resolving consumer disputes through arbitration so it has the consequence that the BPSK arbitration decision must also include irah-irah. Article 48 of Law 8/1999 states that the resolution of consumer disputes through the courts refers to the applicable general judicial provisions by taking into account the provisions of Article 45 of Law 8/1999. Meanwhile, Article 45 of Law 8/1999 broadly states that consumer dispute resolution can be achieved through court or outside court. Dispute resolution outside of court is carried out through conciliation, mediation, or arbitration. Based on this approach, the request for execution of the BPSK decision is based on Article 57 of Law 8/1999 jo. Article 42 Ministerial Decree 350/2001²⁰ can be carried out because it is a specificity of the implementation of executions in general according to the provisions of civil procedural law by the legal principle of *lex specialis derogate legi generalis* which means that special provisions override general provisions.²¹

In the context of regulatory and procedural frameworks, if BPSK (the Consumer Dispute Settlement Board) is required to seek enforcement as stipulated in Article 57 of Law 8/1999 in conjunction with Article 42 of Ministerial Decree 350/2001, this raises concerns regarding BPSK's neutrality as a dispute resolution body. Moreover, if BPSK is tasked with submitting the execution request, it will lead to an increased administrative burden on the organization. To address this issue, Article 7 of Perma 1/2006 designates consumers as the parties entitled to request an execution order from the District Court for BPSK decisions that have not been contested. This provision, however, appears to conflict with Article 57 of Law 8/1999 and Article 42 of Ministerial Decree 350/2001, which specify that BPSK itself should initiate the request for execution from the District Court. According to

²⁰ Article 57 Law 8/1999 jo. Article 42 of Ministerial Decree 350/2001 reads: "BPSK's decision is final and binding and has legal force. The decision for its execution is still requested from the District Court at the location of the consumer who has been harmed by BPSK".

²¹ Mannas, "Upaya Keberatan Atas Putusan Badan Penyelesaian Sengketa Konsumen Ditinjau Dari Hukum Acara dan Undang-Undang Perlindungan Konsumen".

the principle of *lex superior derogate lex inferior*, the provisions of Law 8/1999 should take precedence in resolving this discrepancy.²²

BPSK (the Consumer Dispute Settlement Board) is intended to be a cornerstone for the community in seeking justice for rights infringed upon by business actors. However, there remain significant gaps allowing business actors to disregard consumer rights. The current legal protections for consumers, both preventive and repressive, are insufficient, necessitating a comprehensive revision of existing laws and regulations. Specifically, Law 8/1999 should be amended to clarify the scope and provisions related to consumer disputes. It should also delineate the conditions and procedures for lodging objections to BPSK decisions. Additionally, Law 8/1999 needs to provide detailed regulations on the timeframe and procedural aspects for executing BPSK decisions, including stipulations for the inclusion of the phrase "*FOR JUSTICE BASED ON THE ALMIGHTY GOD*" in BPSK decisions to ensure their continued executorial validity even if this phrase is omitted.

Apart from that, revisions are also needed regarding the parties who can apply for executorial determination of BPSK decisions. Law 8/1999 also needs to pay attention to its alignment with other laws related to consumer dispute resolution, such as consumer disputes in the banking sector, because after the Financial Services Authority was established, regulating consumer protection in the banking sector became one of the duties of the Financial Services Authority.²³ Revision of Law 8/1999 is very necessary to provide legal certainty to the public so that the public as consumers can obtain their rights.

Another factor that causes the position of consumers to be weaker than the position of business actors is the lack of awareness of their rights, which is still low. This is due, in part, to the low level of consumer education. Therefore, Law 8/1999 is expected to become a

²² Hanum Rahmiani Helmi, "Eksistensi Badan Penyelesaian Sengketa Konsumen dalam Memutus Sengketa Konsumen di Indonesia." *Jurnal Hukum Acara Perdata ADHAPER* 1, no. 1 (2015): 77-89.

²³ N. Sri Nurhayati, "Kepastian Hukum Eksekusi Riil Terhadap Putusan Badan Penyelesaian Sengketa Konsumen Nomor 09/PTS/BPSK-Tangsel/VI/2015 Dihubungkan dengan Pasal 54 Ayat (3) Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 7, no. 1 (2020): 143-151.

strong legal basis for the government and non-governmental consumer protection institutions to be able to make efforts to empower consumers through consumer guidance and education. This effort needs to be made because it is difficult to expect business actors to be aware that the economic principle of business actors is to get the maximum possible profit with as little capital as possible. This principle is very likely to harm the interests of consumers, either directly or indirectly. Therefore, there need to be efforts to empower consumers through the formation of laws that can protect consumer interests that can be implemented effectively in society, which can encourage a healthy business climate and provide empowerment and education to consumers regarding their rights and how to obtain them.²⁴

Therefore, it can be concluded that there are several obstacles faced by BPSK in implementing Law 8/1999 such as institutional obstacles, funding obstacles, BPSK human resource obstacles, regulatory obstacles, guidance and supervision obstacles, and low coordination between officials and those in charge, obstacles lack of socialization of consumer protection policies, obstacles to the lack of public response to Law 8/1999 and the BPSK institution. The solution to the problem above is that the presence of BPSK, which has so far functioned as a quasi-judicial institution in the field of consumer disputes, is not an option for the parties to the dispute, this is because every BPSK decision still requires a decree of execution from the Chairman of the District Court where the consumer lives, so that the public believes that this can waste time and money. To overcome this problem, this can be done by eliminating the decision for execution by the chairman of the District Court so that BPSK can become a credible, respected judicial institution and be the choice of the parties to the dispute. Apart from that, it is also necessary to consider the existence of a single consumer dispute

²⁴ Duwi Handoko, *Hukum Penyelesaian Sengketa Konsumen* (Pekanbaru: Hawa & Ahwa, 2019). See also Cut Mayang Widya Nuryaasiinta, "How Far is Consumer Protection in the Health Care Sector?." *Unnes Law Journal* 6, no. 1 (2020): 47-72; Felix Pratama Tjipto, et al. "Consumer Protection Law: The Case Study of Grabtoko Company in Indonesian E-Commerce Transactions." *Journal of Private and Commercial Law* 5, no. 2 (2021): 120-140.

resolution institution. Unlike today, many consumer dispute resolution institutions can be chosen by the parties to the dispute.²⁵

BPSK is an independent state institution or complementary state institution (state auxiliary organ). State auxiliary organs are state institutions that are formed outside the constitution and are institutions that help to carry out the tasks of the main state institutions, namely the executive, legislative, and judiciary which are often referred to as quasi-independent (quasi) state institutions. BPSK is an auxiliary institution in the quasi-judicial sector where the tasks and authorities given are the duties of judicial institutions, in this case, BPSK was formed to simplify the resolution of consumer disputes so that they do not take a long time if they are resolved through court.²⁶ BPSK is adopted from the Small Claims Tribunal (SCT) model but is not similar to SCT. Where SCT comes from countries that adhere to a common law legal system, while Indonesia adheres to a civil law legal system. BPSK appears to have been formed by combining the two legal systems. This can be seen from the concept of BPSK which is a dispute resolution institution outside the court, but the case resolution process is regulated by procedural law such as the civil procedural law in the District Court. Apart from that, the terms used in BPSK are also similar to the terms used in courts, such as Assembly, Registrar, trial, and decision, but the method for resolving disputes uses the terms conciliation, arbitration, and mediation which are known in ADR.²⁷

The Small Claims Court consumer dispute resolution model is a simple dispute resolution system with a single judge, without a jury and simple evidence. This consumer dispute resolution model is adopted and quite popular in the United States. The Small Claims Court model is also adopted in India with different names, namely Consumer Disputes Redressal Agencies/District Forum, Consumer Disputes Redressal Commission/State Forum, and Consumer Protection Council/National Commission with the same involvement of active or retired judges in resolving consumer disputes. Meanwhile, The Small

²⁵ Maryanto, *Prosedur Penyelesaian Sengketa Konsumen di BPSK (Badan Penyelesaian Sengketa Konsumen)*, pp. 53-56.

²⁶ Kurniawan Kurniawan, *Hukum Perlindungan Konsumen: Problematika Kedudukan dan Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen (BPSK)* (Malang: UB Press, 2011).

²⁷ Kurniawan, p. 66.

Claims Tribunal is an institution for settling small-scale civil cases in a simple, informal, fast, and low-cost manner which is generally adopted by countries with a common law legal system such as New Zealand, Hong Kong, and Singapore. The differences in dispute resolution through BPSK, The Small Claims Court, and The Small Claims Tribunal can be seen in the following table:²⁸

TABLE 2. Difference between BPSK, Small Claims Court, Small Claims Tribunal

No.	BPSK	Small Claims Court	Small Claims Tribunal
1.	BPSK is a small-scale, formal and low-cost consumer dispute resolution institution	SCC is a simple, informal, fast, and low-cost consumer dispute resolution institution and is even waived in some countries	SCT is an institution for resolving small-scale civil cases in a simple, informal, fast, and low-cost manner, even in some countries it is exempt from court fees
2.	The BPSK Council consists of government elements, consumer elements, and business actors	Members of the consumer dispute resolution panel in India are a combination of active and retired judges and members of the community	In the Small Claims Tribunal, the person acting as a judge is a Barrister or Solicitor as a Referee
3.	BPSK is not associated with limits on the number of claims, limits on the value of losses or claims that can be filed	In India, the level of dispute resolution that provides the amount of value of the lawsuit	The Small Claims Tribunal sets limits regarding claims that can be filed, namely that the loss suffered by consumers is no more than Sin\$ 2000 (Singapore Dollars)

²⁸ Kurniawan, pp. 71-84.

No.	BPSK	Small Claims Court	Small Claims Tribunal
4.	Apart from resolving consumer disputes, BPSK also has the authority to supervise standard clauses	Consumer dispute resolution institutions in India have the only task and authority to resolve consumer disputes	Some cases can or cannot be submitted to the Small Claims Court or Small Claims Tribunal

Sources: Kurniawan, 2011 (edited)²⁹

Based on these things, amendments to Law 8/1999 are also needed to be able to provide legal certainty by clarifying the meaning of final and binding decisions, such as providing separation if BPSK has been chosen to resolve a dispute then full authority must be given to BPSK to resolve the dispute so that it is closed. judicial institutions can intervene and their decisions can be executed immediately. Apart from that, there is also a need to limit the value of losses or lawsuits that can be submitted to BPSK. Members of the BPSK Council should also come from government, business, and consumer elements with a law degree background so that they have a better understanding of their duties in the judicial sector as well as reducing BPSK's duties and authority to focus more on resolving consumer disputes. The execution of BPSK arbitration decisions should also pay attention to Law 30/1999 due to the choice of dispute resolution by arbitration so that BPSK becomes an arbitration institution.

Conclusion

The final and binding meaning in Article 54 paragraph (3) of Law 8/1999 is not the same as the final and binding meaning in the decision of the Constitutional Court. The BPSK decision is only final and binding on the BPSK decision which is resolved through mediation and conciliation only. Meanwhile, BPSK decisions that are resolved by arbitration can only be said to be final and binding provided that no objections are raised by the parties to the dispute. The provisions of Article 56 paragraph (2) and Article 58 paragraph (2) of Law 8/1999

²⁹ Kurniawan, pp. 82-84.

also caused many BPSK decisions to be objected to by the District Court and even annulled by the Supreme Court.

Apart from that, there were various problems in implementing Law 8/1999 related to the BPSK decision, so the government made several other arrangements to help implement Law 8/1999 related to the BPSK decision, such as Ministerial Decree 350/2001 and Perma 1/2006. However, in its implementation, there are still problems faced by BPSK in implementing Law 8/1999. For Law 8/1999 to provide legal certainty for the public, especially regarding BPSK decisions that are final and binding, a revision of Law 8/1999 is needed, such as the inclusion of a clause where BPSK decisions are final and binding, accompanied by the addition of provisions in the article governing BPSK competence. regarding cases that can be submitted and those that cannot be submitted to BPSK.

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