

# **Establishment Of A Voluntary Self Regulation Non-Governmental Consumer Dispute Resolution Organization In Principle Of Fairness And Equality**

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## **Abstract**

Restorative Developments in the economic sector will increase the production and consumption power of society. If consumers suffer losses, economic agents are obliged to be able to provide compensation for the products sold to consumers. The UUPK provides for alternative dispute resolution outside the judicial system, namely through the Non-Governmental Consumer Protection Agency (LPKSM). Settlement of consumer disputes in LPKSM with a voluntary self-regulation mechanism or self-regulation as an effort to regulate, control, evaluate, select and determine a performance that will certainly minimise or reduce the



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number of disputes that go to the Consumer Disputes Board (BPSK) or the District Court. The research method uses normative legal research by tracing literature studies using a normative legal approach in order to obtain new perceptions of the situation by providing a new form of concept in resolving consumer disputes at LPKSM. The concept of the LPKSM's Voluntary Self-Regulation Mechanism is designed to help various parties, especially business actors and consumers, quickly and inexpensively to resolve disputes at the lowest level before they reach the BPSK or the courts. As a form of voluntary self-regulation, mediation is the right method to implement the principle of equality before the law. The LPKSM acts as a third party, an outsider who is declared to be neutral (impartial) and who helps the parties to come to an agreement. The benefits of resolving consumer disputes are quick, inexpensive and confidential, and can even be described as a win-win solution, set out in a joint peace deed.

**KEYWORDS** *Consumer disputes, fairness, LPKSM, voluntary self-regulation*

## I. Introduction

The times are followed by developments in the fields of science, technology and communication that are more and more advanced. Particularly in the economic field, which is developing very rapidly, more and more economic actors are competing to give the public the confidence to buy the products they produce through various media, both digital and print. The aim is to influence the public as consumers of the products produced by business actors. There are still many business practices that harm consumers in various ways in order to make a lot of profit. Businesses often make efforts to

manipulate the advertising process, dishonest sales and agreements that are very profitable for business actors but detrimental to consumers.

As a result, there is an unbalanced position between business actors and consumers by conducting business development that ignores the rights and welfare of consumers. There is a need for concrete consumer protection in order to minimise the losses that are constantly incurred by consumers and to protect their rights. Since 20 April 1999, the Government has issued Law No. 8/1999 on Consumer Protection, which came into force on 20 April 2000, known as the UUPK. This law aims to increase the awareness, ability and even independence of consumers to protect themselves, as well as the rights and obligations of economic operators and consumers.

Consumer protection will certainly be the government's duty in providing legal certainty, which is the consumer's right.<sup>1</sup> On the other hand, the issuance of the UUPK is not intended to eliminate or kill business actors, but to develop healthy business activities of business actors.<sup>2</sup> The UUPK will provide and create a system of protection mechanisms for consumers as a form of legal certainty.

If there is a loss felt by consumers, then business actors are obliged to be able to provide compensation for the products sold to consumers, this is a form of fulfilling the rights of consumers who are harmed by business actors. From this it can be seen that the

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<sup>1</sup> Abdul Halim Barkatullah, *Hak-Hak Konsumen* (Bandung: Nusamedia, 2010).

<sup>2</sup> Riris Nisantika and Ni Luh Putu Egi Santika Maharani, "Settlement of Consumer Disputes by the Consumer Dispute Resolution Agency (BPSK)," *Jurnal Locus Delicti* 2, no. 1 (2021): 49–59.

economic actor as producer is the party that must be responsible for compensating consumers for the products produced. If there are business actors who do not compensate, then a consumer dispute resolution procedure is necessary, as stated in Article 45(1) of the UUPK, which states that for every consumer who is harmed by a business actor, the consumer can sue the business actor through the institution of the BPSK or through the general court. Meanwhile, Article 45(2) of the UUPK states that consumer disputes may be pursued through court proceedings or out of court.

Article 58 of Law 48/2009 on Judicial Power, which stipulates that civil disputes may be settled using arbitration or alternative dispute resolution.<sup>3</sup> This is undoubtedly a form of out-of-court settlement with legal options that can take the form of negotiation, conciliation, mediation and arbitration.

The UUPK has provided an alternative settlement as a form of agency outside the judicial system, namely through the Non-Governmental Consumer Protection Agency, known as LPKSM.

The LPKSM is a non-governmental institution in the form of an organisational forum registered and recognised by the government for the purpose of protecting and dealing with consumer protection. Under Article 44(2) of the UUPK, the LPKSM plays an active role in efforts to protect consumers.<sup>4</sup> Article 44(3) of the

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<sup>3</sup> Muskibah Muskibah, "Analysis on how to resolve consumer disputes," *INOVATIF|Jurnal Ilmu Hukum* 2, no. 4 (2010): 142–49.

<sup>4</sup> Widjaja Gunawan and Ahmad Yani, "Law on Consumer Protection," Cetakan Keempat, PT. Gramedia Pustaka Utama, Jakarta, 2008, 93–94.

UUPK and Article 3 of Government Regulation No 59/2001 on the LPKSM set out the tasks of the LPKSM, which are as follows:

- a. Disseminate information on the rights and obligations of consumers to exercise caution when consuming goods and/or services.
- b. Provide advice to consumers who really need it.
- c. Co-operate with relevant authorities to achieve consumer protection.
- d. Receiving complaints and grievances to fight for their rights.
- e. To conduct joint supervision with the government and the public in providing consumer protection.

LPKSM is able to act as an advocate on behalf of consumers or to empower consumers to fight for their rights independently, individually or in groups.<sup>5</sup> It goes without saying that LPKSM's tasks can contribute to the best possible protection of consumers, which must of course be supported by the state and society in general. In order to provide legal protection for consumers, LPKSM is expected to be responsible for the settlement of consumer disputes, even though LPKSM's role is limited to acting as a mediator in consumer disputes.

The position of LPKSM, which is very close to the community, will certainly play an active role in realising the protection of consumers who have been harmed, so that it will be able to deal with the case more quickly. Settlement of consumer disputes at

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<sup>5</sup> Luthvi Febryka Nola, "Advokasi Hukum Oleh LPKSM," *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 5, no. 2 (2016): 193.

LPKSM with a voluntary self-regulation mechanism or self-regulation as an effort to regulate, control, evaluate, select and determine a service that will certainly minimise or reduce the number of disputes that go to the Consumer Disputes Board (BPSK) or even to the District Court.

The legal problem that arises today is the annulment or cancelation that occurs in BPSK decisions that are considered by the Supreme Court to be decisions that do not fulfill the requirements of the principle of justice and do not provide decisions that equally get an equal position. This is proven by the existence of several cases of BPSK decisions that were canceled by the Supreme Court, namely 127 BPSK decisions.<sup>6</sup> There is a real example between a customer and a financing institution that did not accept that the customer's vehicle was taken by the financing institution because he had paid his credit installments, the decision stated that the financing institution had to pay compensation to the customer in the amount of Rp. 466,000,000,- (four hundred sixty-six million rupiah). The Supreme Court then decided to annul the BPSK decision because it was not the realm of BPSK, but the realm of the General Court, so the aggrieved party had to apply to the General Court for the dispute.<sup>7</sup> A case also occurred in one of the national banks that had conducted an auction of land collateral,

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<sup>6</sup> Rida Ista Sitepu and Hana Muhamad, "Efektifitas Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 3, no. 2 (2021): 9.

<sup>7</sup> asp/rvk, "Tok-127-Keputusan-Sengketa-Konsumen-Dianulir-Ma," <https://news.detik.com/berita/d-3669668/tok-127-keputusan-sengketa-konsumen-dianulir-ma>, April 2025.

BPSK's decision imposed a penalty in the form of forced money on the bank, BPSK's decision was also annulled by the Supreme Court which stated that BPSK was not authorized to adjudicate the credit dispute with the existence of a mortgage.<sup>8</sup> There was another case involving a financing institution which also made a withdrawal of a motorcycle to a customer who was late in paying credit installments, BPSK punished the financing institution to pay a fine of Rp. 100,000,- (one hundred thousand rupiah) per day if the customer did not immediately return the motorcycle. The Supreme Court considered that the action of the customer was a civil dispute in the form of default, not a consumer dispute.<sup>9</sup>

The existence of BPSK has resulted in a form of uncertainty felt by consumers, so that consumers have to walk twice in resolving consumer disputes. It is hoped that BPSK will be present in the midst of society with the aim of providing optimal protection of consumer rights. Theoretically, this is in accordance with the opinion of experts who explain the existence of legal certainty that is used to achieve legal objectives. Gustav Radbruch has explained that the theory of legal certainty must be based on 4 (four) very fundamental things with a close relationship between the meaning of legal certainty. The 4 (four) fundamental things are by showing that the law is a positive thing in the form of legislation, secondly based on facts in accordance with the findings in reality, thirdly

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<sup>8</sup> asp/rvk. Ibid.

<sup>9</sup> Rifkiyati Bachri and Yunan Prasetyo Kurniawan, "Disparitas Pemahaman Hakim Dalam Penyelesaian Sengketa Konsumen (Kajian Putusan No. 350 K/Pdt. Sus-BPSK/2016 Dan NO. 10/Pdt. Sus-BPSK/2016/PN. Plk)," *Khairun Law Journal* 1, no. 2 (2020): 100–108.

with the existence of laws that must be formulated in detail and in detail, so that it is clear and will anticipate as a form of error in interpreting and / or interpreting the law. Finally, positive law should not be changed in the short term, so it must be able to provide certainty that has been considered to be used for a long period of time.<sup>10</sup> In connection with this legal certainty, it means that the form of legal certainty is a legal product in the form of legislation, so that the existence of these rules will serve as norms and guidelines for the community, especially consumers. The law will carry out its function by providing guarantees to the community to obtain legal certainty in every legal relationship between humans and one another, so that the law is intended for all parties.<sup>11</sup> Through this legal certainty, consumers will obtain a definite situation. Law in its essential principle, it must be able to be fair and certain, so that with the certainty of law that will be used as a guide in behaving fairly or a manifestation of the implementation of legal justice.<sup>12</sup> Legal products as a form of legal certainty must be able to carry out the function of the law, for it will be realized from an order that is rationally valuable and should be applied in society.

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<sup>10</sup> Anindya Shamara Arminawan, Yuhelson Yuhelson, and Erny Kencanawati, "Kepastian Hukum Pembiayaan Musyarakah Pada Perbankan Syariah Terkait Eksistensi Utang Antara Nasabah Dan Bank," *Journal of Innovation Research and Knowledge* 4, no. 10 (2025): 7775–82.

<sup>11</sup> Nur Rahmi Febriani, Dhoni Martien, and Yurisa Martanti, "Kepastian Hukum Perubahan Status Perseroan Terbatas Menjadi Perseroan Terbatas Penanaman Modal Asing Akibat Wanprestasi," *Jurnal Multidisiplin Indonesia* 2, no. 10 (2023): 3029.

<sup>12</sup> Steven S Gugu, "Mencari Kepastian Hukum Dalam Perkawinan Beda Agama Pasca Lahirnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023," *Journal Scientia De Lex* 11, no. 2 (2023): 22.



In connection with the existence of a form of legal certainty, the principles of the values of justice will also be used as guidelines in creating ideas that will be created with the concept of law, so that there needs to be a situation that can provide equal positions and situations for every human being in society.<sup>13</sup> No party is disadvantaged and no party is higher in position, so as to create a balanced and impartial condition. The goal of justice will provide equal rights and can benefit the community that applies equally to everyone.

With the existence of a settlement mechanism at the lower level, namely at the LPKSM level called Voluntary Self Regulation, the hope is that it can realize a form of legal certainty and legal justice. It can be seen that the legal novelty through the Voluntary Self Regulation concept will give full authority to LPKSM in resolving consumer disputes more quickly and accurately, so that institutional effectiveness will be created without further involving the institutions above it. In the world of politics, the concept of state policy can be realized by formulating on 3 (three) value horizons that are very dominant in influence, such as the concept offered by Gerhard Vowe, namely:<sup>14</sup>

1. Security values that must be able to create a sense of comfort and security to the community;

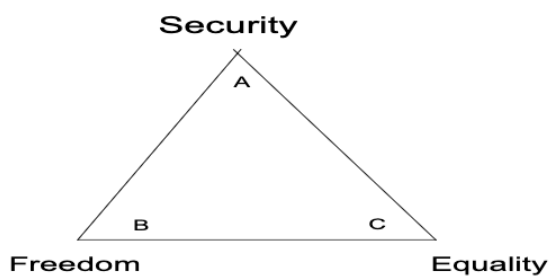
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<sup>13</sup> Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)," Jurnal Konstitusi 6, no. 1 (2009): 140–49.

<sup>14</sup> Pan Mohamad Faiz, "Teori Keadilan John Rawls (John Rawls' Theory of Justice)," Jurnal Konstitusi 6, no. 1 (2009): 140–49.

2. The value of freedom by ensuring that community groups express their opinions freely on the basis of their thoughts and ideas;
3. The value of justice, which is intended to anticipate any imbalance or inequality in society, so that its influence is felt by the entire community.

The concept of Gerhard Vowe is illustrated in the formulation of an equilateral triangle relationship that attracts each other and provides an effort not to dominate each other, the concept is described as follows:<sup>15</sup>



Voluntary self-regulation is legal protection at the time before the transaction from business actors to consumers, business actors voluntarily make their own rules to implement a prudent system in the production of goods / services produced.<sup>16</sup> Voluntary self-regulation can be used by LPKSM as a form of legal protection in the production process of business actors to ensure that consumer disputes are resolved quickly and independently, resulting in a win-win solution rather than a win-lose solution. This is also a form

<sup>15</sup> Wahyuni. Ibid.

<sup>16</sup> Johanes Gunawan, "Consumer Protection Law," Universitas Katolik Parahyangan, Bandung, 1999, 3.

of quality control of the production process so as not to cause harm to consumers and will provide benefits and welfare to business actors and consumers.<sup>17</sup> In fact, there are still products circulating in the Community that are not of high quality and even counterfeit, especially in rural communities that are still unaware of the effects and consequences of the products they use, such as bottled or canned food and drinks, medicines, etc.<sup>18</sup> This means that the higher the level of safety of a good/service produced by a business actor, the higher the level of consumer confidence in consuming and using the business actor's product, thus minimising the occurrence of consumer disputes.

LPKSM is the strongest undercurrent institution that can be widely socialised in the community, because the role of LPKSM is to represent and fight for the aspirations and rights of consumers. At that time, before the existence of UUPK, the undercurrent was played directly by YLKI (Yayasan Lembaga Konsumen Indonesia).<sup>19</sup>

Voluntary self-regulation is, of course, what is expected of LPKSM in order to be able to play an active role in controlling, monitoring and evaluating the production process of internal rules of economic actors, so that they are really able to be responsible for the goods/services they produce. The LPKSM must be able to play

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<sup>17</sup> Ayu Permata Sari and Aminah Suradi, "Legal Protection for Subscribed Broadcasting Service Users (TV Subscription) with Unilateral Change of Subscription Package Price by Subscribed Broadcasting Organisations," *Diponegoro Law Journal* 6, no. 2 (2017): 8.

<sup>18</sup> Tri Siwi Kristiyani Celina, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2017).

<sup>19</sup> Narya Suryadi, Yuniar Rahmatiar, and Muhamad Abas, "Consumer Protection Law Juridical Review of the Existence of Non-Governmental Consumer Protection Organisations in Karawang District Based on Law Number 8 of 1999 Concerning Consumer Protection," *Jurnal Ilmu Hukum The Juris* 7, no. 1 (2023): 212.

a role in the resolution of consumer disputes, so that they do not have to be referred to the BPSK or the District Court, but can only be resolved at the LPKSM level, so that it is necessary to update and/or amend the duties of the LPKSM contained in Article 44(3) of the UUPK and Article 3 of PP no. 59/2001 concerning LPKSM, in order to extend the authority and responsibility of the LPKSM, which is not only involved in supervision after the economic operator's product has been placed on the market, but is also able to suppress and monitor the supervision of producers during and before the production process. This will hopefully change the value system in society towards attitudes and actions that can support the implementation of consumer protection. As the essence of the UUPK that can provide equality from the position of economic actors with consumers in order to realise the principle of equality with justice.

Problems that often arise in the absence of this LPKSM, the community as consumers will often be neglected in fighting for their consumer rights. This LPKSM has the authority to fight for consumer rights when goods and/or services from business actors have been circulating in the market or among the public. The products of business actors often harm consumers, but consumers often experience confusion about requests for reports or complaints of such losses. In accordance with Article 3 of PP No. 59 of 2001 concerning LPKSM, it explains the duties of LPKSM, namely:

- a. Disseminate information on consumer rights and obligations to be careful in consuming goods and / or services.
- b. Provide in the form of advice to consumers who really need it.
- c. Cooperation with relevant agencies in order to realize consumer protection.
- d. Receiving complaints and grievances to fight for their rights.
- e. Conduct joint supervision with the government and the community in providing consumer protection.

The role of LPKSM must be implemented in accordance with the provisions of the legislation, so that by implementing these rules, consumer rights will be fulfilled properly and optimally. The role of LPKSM is also a form of anticipation of consumers so that they are not always disadvantaged as a result of the circulation of goods and/or services in circulation. Currently, consumer disputes can be resolved through the court or out of court, namely through the BPSK Institution with 3 (three) legal settlement terms, namely mediation, conciliation and arbitration. The advantage of settlement through BPSK is that it can be quick, easy, cheap and simple in the trial process, therefore consumers should prefer to file complaints or reports of losses through BPSK. BPSK will assist consumers in providing solutions to consumer disputes that implement dynamic settlements for the parties so that it emphasizes the settlement of agreements rather than losing or winning for one of the parties. BPSK in principle has a faster legal

process compared to the District Court, but in reality it still experiences obstacles in its implementation due to institutional constraints on the existence of its existence which is still very limited, funding constraints which still rely on the local budget which has a minimal budget allocation for BPSK operations, human resource constraints which many still do not understand and master the material on Consumer Protection, rules which still do not regulate in detail the procedures for lawyers and administrative Standar Operational Prosedure (SOP), constraints on disseminating information and socialization to the community so that people are aware of their consumer rights, as well as constraints in the judicial field of legal protection policy.<sup>20</sup>

Based on the constraints in BPSK, it is necessary to make changes in the legal structure through Voluntary Self Regulation in LPKSM, so that with this concept the big hope is that there will be a faster process of resolving consumer disputes without tiering in other higher resolution institutions. LPKSM with the novelty of this concept will provide a settlement process at the lowest level of society that really knows firsthand the problems faced by consumers. The concept of lawyering in LPKSM is similar to mediation which will be mediated by a neutral party to the parties' dispute, so as to provide a decision that can benefit the parties to the dispute. LPKSM hopes to have the authority to examine, hear and decide consumer cases like other judicial bodies, so that the

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<sup>20</sup> Hesti Dwi Astuti, "Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Hukum Mimbar Justitia* 1, no. 2 (2017): 584–88.

settlement at the lower level will anticipate the cancellation of BPSK decisions in the Supreme Court which will cause losses to consumers and does not reflect the principle of fair legal certainty.

Based on the above description, the problems of this research can be formulated, namely:

1. What is the role of LPKSM in the consumer dispute resolution process in providing consumer protection?
2. Can the concept of voluntary self-regulation mechanism carried out by LPKSM against business actors in consumer dispute resolution realise the principle of equality with justice?

This type of research uses normative legal research or doctrinal legal research by tracing literature studies as secondary data and conceptualised as written in laws and regulations as a form of rules or norms of human behaviour. Peter Mahmud Marzuki stated that this research is a process to find a rule of law in accordance with legal principles and doctrines to answer the legal problems at hand. The mechanism of this research is carried out by tracing literature studies related to the role of LPKSM in resolving consumer disputes with voluntary self-regulation mechanisms as the main data based on legal principles, including this research using a normative legal approach to obtain new perceptions of the situation by providing a new form of concept in resolving consumer disputes at LPKSM.

This research uses normative juridical research to obtain new perceptions of the situation by providing a new form of concept in resolving consumer disputes at LPKSM. The method used in this

research is by means of descriptive qualitative which is carried out by means of an analytical process. The research approach used in this research is through a conceptual approach and statue approach.<sup>21</sup> Through this approach, this research will obtain good research results and can be scientifically accounted for.<sup>22</sup> The source of data used in this research is by using primary data sources obtained directly from the search for literature studies from books, journals, thoughts of experts, legal cases, jurisprudence related to the problems in this study.<sup>23</sup> The legal materials used are by referring to primary legal materials, namely the 1945 Constitution, Law Number 8 of 1999 concerning Consumer Protection, Government Regulation Number 59 of 2001 concerning Non-Governmental Consumer Protection Institutions, while for secondary legal materials are legal materials that support primary legal materials, namely books related to consumer protection law, books in civil procedural law, books related to institutions, relevant journals, materials / news on the internet. The technical analysis used is qualitative analysis in the form of interactive/circle, by performing repetitive, continuous activities that always move in a cycle of activities back and forth including data collection, data presentation, and data verification or

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<sup>21</sup> Bambang Tri Bawono and Henning Glaser, "The Urgency of Restorative Justice Regulation on Hate Speech," *Bestuur* 11, no. 2 (2023): 367–68, <https://doi.org/10.20961/bestuur.v11i2.82508>.

<sup>22</sup> Januari Nasya Ayu Taduri, "The Legal Certainty and Protection of Foreign Investment Againsts Investment Practices in Indonesia," *Lex Scientia Law Review* 5, no. 1 (May 30, 2021): 122, <https://doi.org/10.15294/lesrev.v5i1.46286>.

<sup>23</sup> Johny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Surabaya: Bayumedia, 2008).



conclusion drawing. Included in the data processing carried out in this study is by examining the data that has been obtained, the editing process to determine whether the data is to be continued or not and through systematization of the data collected and then arranged systematically.<sup>24</sup> This is done in order to produce findings that are representative and relevant to the problem under study. Data analysis is a series of three processes carried out simultaneously, namely; data condensation, data display, and drawing/verifying conclusions. By going through data reduction activities accompanied by the presentation of data that has been compiled, then at the end, conclusions are drawn.

## **II. The The Role of LPKSM In Consumer Dispute Resolution**

To start Indonesia LPKSM is an institution outside the government, recognised and registered by the government, with activities and powers in the field of consumer protection.<sup>25</sup> Article 44(3) of the UUPK sets out the duties of the LPKSM as follows:

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<sup>24</sup> N D Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum: Normatif & Empiris* (Yogyakarta: Pustaka pelajar, 2010).

<sup>25</sup> Luthvi Febryka Nola, *Op.Cit.* Page. 193.

- a. Disseminate information on the rights and obligations of consumers to exercise caution when consuming goods and/or services.
- b. Provide advice to consumers who really need it.
- c. Co-operate with relevant authorities to achieve consumer protection.
- d. Receiving complaints and grievances to fight for their rights.
- e. To conduct joint supervision with the government and the public in providing consumer protection.

As for technical, it has been regulated in Government Regulation Number 59 of 2001 concerning the Non-Governmental Consumer Protection Agency (PP LPKSM), namely in Article 4 of PP LPKSM regarding the dissemination of information in the form of knowledge about consumer protection including related laws and regulations, Article 5 PP LPKSM is by providing advice to implement the rights and obligations of consumers, Article 6 PP LPKSM regulates cooperation with relevant agencies in the exchange of information from the supervision of goods and / or services and advice on consumer education, in Article 7 PP LPKSM seeks to advocate in the fight for consumer rights, while in Article 8 PP LPKSM monitors consumer protection together with the government and the public for goods and / or services circulating in the market through testing, research and also field surveys.

Currently, there has been a change in Article 9 paragraph (2) of the PP LPKSM, which is regulated by Government Regulation No. 89 of 2019 on Non-Governmental Consumer Protection

Institutions, which regulates the form of reporting in the performance of its duties, to report to the Provincial Government every year instead of reporting to the Regency / City Government. This serves as a form of mechanism to carry out its duties and main functions in accordance with applicable regulations under the auspices of the Province. This LPKSM has the advantage and opportunity to play an active role in protecting the interests of consumers, a form of case that occurred in 2018 in Sumedang, namely between consumers with the initials ZSN and PT AF financing institutions for objects in the form of motorcycles that were damaged because there was a confiscation of the object due to late payment of instalments made by debt collectors without giving dispensation time.<sup>26</sup>

In order to protect the consumer, a letter of suspension is sent to PT AF for the object of the guarantee, and the object of the guarantee is temporarily stored at LPKSM, so that it cannot be arbitrarily seized before the certificate or court decision is issued.<sup>27</sup> Furthermore, in a consumer dispute in 2020 against a fraud committed by a start-up company (e-commerce) selling branded goods at low prices in the form of 2 Iphone mobile phones obtained from social media advertisements with heavily discounted promotional information.<sup>28</sup>

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<sup>26</sup> Acep Fahmi Abdullah Salam, "The Role of LPKSM Al-Jabbar in Resolving Fiduciary Security Disputes in Sumedang Regency," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 12, no. 2 (2018): 109.

<sup>27</sup> *Ibid*, Page. 110.

<sup>28</sup> Tamar Lidya Anggaristi PP and Mariske Myeke Tampi, "Legal Protection of Consumers Harmed Due to Fraud by Pt Grab Toko Indonesia Based on Law Number 8 of 1999 Concerning

The settlement is carried out with the proof of fraudulent acts committed by business actors who have been declared to fulfil the elements of fraud regulated in the UUPK Law, namely that there has been a default by using the Internet electronic media in transactions, causing losses to the traded goods that are proven not to be in accordance with what is advertised.<sup>29</sup>

It goes without saying that it is strictly forbidden to engage in business practices that involve false or misleading advertising, including the nature, characteristics, standards and quality of goods that do not meet consumer safety standards.<sup>30</sup> In the advertising business, advertisers must dare to be responsible in presenting advertising information correctly, honestly, as it is and in accordance with reality; this is a manifestation of the fulfilment of consumer rights.<sup>31</sup> At least through LPKSM, it can operate well in accordance with its functions, duties and powers as a form of legal protection for consumers, both preventive and repressive. LPKSM can contribute to the resolution of consumer disputes by assisting consumers in the event of complaints, by fighting for their rights and by having the right to monitor the implementation of consumer protection. Legal protection must also be able to provide legal

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Consumer Protection (Case: Desty Nurcahyani with Pt Grab Toko Indonesia in 2020)," *Jurnal Hukum Adigama* 4, no. 2 (2021): 499.

<sup>29</sup> *Ibid*, Page. 517.

<sup>30</sup> Julieta Santi Simorangkir et al., "Crime of Fraud Related to Advertisement of Sale of Goods That Harms Consumers," *USU Law Journal* 4, no. 1 (2016): 90.

<sup>31</sup> Janus Sidabalok, "Consumer Protection Law in Indonesia," Bandung: Citra Aditya Bakti, 2006, 245.

protection in relation to human rights and duties.<sup>32</sup> In addition, LPKSM is very close to the community, so that it is expected to be able to take the lead in protecting consumers against losses. In addition, LPKSM also offers consumer protection as a form of creating order through value relationships or rules in the living together of fellow human beings.<sup>33</sup>

LPKSMs that can be recognised by the government are LPKSMs that are registered in the Consumer Protection Institution Registration Certificate (TDLPK), which is a registration certificate issued directly by the government to LPKSMs that meet the requirements set out in the articles of association. This TDLPK is issued based on the location of the LPKSM and is valid throughout the Republic of Indonesia, meaning that any LPKSM can carry out its functions throughout the territory of Indonesia. One of the registered LPKSMs is the Indonesian Consumers Foundation (YLKI), which was established on 11 May 1973 as mandated by Article 44(3) of the UUPK and aims to fight for consumer rights and to receive and handle complaints and losses suffered by consumers.

YLKI usually receives complaints either in the form of direct mail, copy mail or electronic mail. YLKI also aims to make it easier for consumers to lodge complaints and can provide information or ask questions to YLKI. The general rules concerning the follow-up

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<sup>32</sup> Ni Putu Januaryanti Pande, "Consumer Protection against Imported Cosmetic Products That Are Not Registered at BBPOM Denpasar," *Jurnal Magister Hukum Udayana* (Udayana Master Law Journal) 6, no. 1 (2017): 18.

<sup>33</sup> Diskhamarzeweny Diskhamarzeweny and Zul Ammar, "E-Commerce Ditinjau Dari Perspektif Manajemen Pemasaran Dan Hukum Perlindungan Konsumen," *KODIFIKASI* 4, no. 1 (2022): 130.

of complaints are clearly stated on the official website of the YLKI Service Centre.<sup>34</sup> Online complaint services can be facilitated provided that the substance of the problem is related to consumer disputes, namely between business actors and end consumers, consumers have also fulfilled obligations under the UUPK or agreed contracts, there are violations of consumer rights listed in the UUPK, the value of the claim does not exceed Rp. 300,000,000 (three hundred million rupiah), which is a material loss, the consumer is not currently complaining to other institutions such as the BPSK or the court and has filed a written complaint with the business actor, and the goods/services in dispute are not illegal goods/services.

The limits of YLKI's responsibility are as follows:<sup>35</sup>

- a. A complaint is a breach of consumer rights;
- b. Efforts to follow up complaints where the substance of the complaint is a dispute between the professional and the final consumer;
- c. Follow-up efforts are made on the basis of the registered complaint;
- d. Efforts to facilitate the resolution of the problem, but without any obligation to resolve it completely; and
- e. YLKI cannot be sued if the efforts made do not meet the consumer's expectations.

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<sup>34</sup>YLKI, <https://Pelayanan.Ylki.or.Id/Index.Php>,  
<https://pelayanan.ylki.or.id/index.php>, October 19, 2024.

<sup>35</sup>YLKI, <https://Pelayanan.Ylki.or.Id/Kb/Faq.Php?Id=2>,  
<https://pelayanan.ylki.or.id/kb/faq.php?id=2>, October 19, 2024.

The role of the LPKSM in the country is important for consumer protection, which began when the World Consumer Congress in Santiago demonstrated the role of national consumer organisations in seeking justice for consumers.<sup>36</sup> LPKSM also has a function in receiving more complaints from the public than directly to the Consumer Disputes Board (BPSK), LPKSM plays a role in peace efforts and assistance to the parties. YLKI gives more advice to the parties, if the case is not complicated, it is carried out with a mediation mechanism, but if it turns out that there is no meeting point, it is referred to the BPSK.<sup>37</sup> On the other hand, YLKI's role in consumer protection in Indonesia is as follows:<sup>38</sup>

- a. Must represent exclusively the interests of consumers;
- b. The promotion of trade will be meaningless to the detriment of consumers;
- c. The profile of its activities must be non-profit making;
- d. Not accept advertising for commercial reasons;
- e. Shall not exploit information and advice for the sole purpose of trade;
- f. Shall not allow the sponsor's message to influence its actions and comments.

This means that in this case YLKI must act to represent the interests of consumers so that they can be properly protected.

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<sup>36</sup> Nurul Amaliah, "Financial Services Consumer Protection (Study of the Role of Consumer Organisations in Yogyakarta)," *Jurnal Multidisiplin Indonesia* 1, no. 4 (2022): 1191.

<sup>37</sup> S Sudaryatmo, *Consumer Law & Advocacy* (Bandung: Citra Aditya Bakti, 1999).

<sup>38</sup> Andi Sri Rezky Wulandari and Nurdiyana Tadjuddin, *Consumer Protection Law* (Jakarta: Mitra Wacana Media, 2018).

Including in the institutional sphere either on the basis of the initiative of producers and / or their associations even to the sphere of the government as a manifestation of the interests of consumer protection.<sup>39</sup>

In business activities, there is a legal relationship that occurs between business actors as parties who produce products and/or services that are traded to the public as consumers. Business actors have the main orientation, namely by obtaining profits from the sale of goods and / or services they produce. The acquisition of profits from business actors is often detrimental to consumers as the party using the goods and/or services, so they are often the target of exploitation for business actors. Consumers are always in a weaker position compared to the position of business actors both from a social and economic perspective, the impact is often obtained by consumers due to limitations in terms of economic factors, educational background, knowledge and psychological pressure. Intervention from the government is needed by consumers so that they are always in a balanced position with business actors. One of the ways that the government can do this is by making changes to the existing legal structure in the Non-Governmental Consumer Protection Agency in order to provide optimal protection from the lowest layer, for which LPKSM must be able to resolve consumer disputes. This is in accordance with one of the roles of LPKSM in Article 44 paragraph (2) of the GCPL which

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<sup>39</sup> Yusuf Shofie, *Consumer Protection and Its Legal Instruments* (Bandung: Citra Aditya Bakti, 2000), 18.



states that forms of consumer protection in the form of self-help communities will have the opportunity to play an active role in providing protection to consumers. LPKSM is required to really provide protection to consumers actively, so that consumers will be able to feel comfortable and safe when buying and using goods and/or services from business actors. In accordance with Article 45 of the GCPL, consumers who are harmed by the products of business actors can file a lawsuit against the business actors through the court or out of court, in this case by BPSK. LPKSM must be able to become a stronghold of consumers at the lowest level who really directly feel the loss, besides that the role of LPKSM is also able to have the right to sue to represent the interests of consumers with formal requirements that must be met, namely in the form of a legal entity or foundation that already has articles of association and is registered as an institution that aims to provide protection to consumers. LPKSM must also be able to play a role in assisting consumers in resolving consumer disputes in the form of mediation, conciliation and arbitration. The existence of LPKSM can really help consumers, because consumer rights violated by business actors are really fought for to obtain legal justice. There are many examples of cases that have been handled well by LPKSM and found a solution to consumer losses, one of which occurred in the West Java area that there are business actors who are not willing to give back collateral objects, even though consumers have paid off debts at the financing institution. LPKSM is able to fight for the return of the collateral object to the consumer as the legal

owner of the collateral object, so that business actors who are not in good faith must pay compensation to consumers.

### **III. The Concept Of A Voluntary Self-Regulatory Mechanism Implemented By LPKSM In The Resolution Of Consumer Disputes In Order To Implement The Principle Of Equality With Justice.**

With around 80% of Indonesia's population of working age, the majority of the population has very high purchasing power, which is influenced by the number of people in the middle class.<sup>40</sup> The Indonesian state is always seen by consumers as providing special protection, because the government receives an increase in investment through the efforts of companies. On the other hand, this shows that the position of consumers is weak compared to the position of producers as economic actors.<sup>41</sup>

Consumer protection is the provision of guarantees to consumers to achieve equality with economic operators, so that the

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<sup>40</sup> Hartanto Hartanto and Cut Wilda Meutia Syafiina, "The Effectiveness of Consumer Protection Against Cosmetic Products That Do Not Have a Distribution Permit from the DIY Food and Drug Supervisory Centre (In the Perspective of Criminal Law)," *Jurnal Meta-Yuridis* 4, no. 1 (2021): 58.

<sup>41</sup> Muhammad Djakfar, *Hukum Bisnis: Membangun Wacana Integrasi Perundangan Nasional Dengan Syariah* (Malang: UIN-Maliki Press, 2016), 433.

relationship between economic operators and consumers is in a balanced position. This is in line with Article 2 of the UUPK, which states that consumer protection must be based on the principles of utility, equity and balance, consumer safety and legal certainty. For this reason, the application of these principles to the transactional process between economic operators and consumers must be appropriately reflected.

Legal protection for consumers can take place before the transaction (no conflict/pre-purchase) and/or after the transaction (conflict/post-purchase).<sup>42</sup> This means that consumer protection in this case can be carried out in several stages, both before, during and after the transaction process. Protection before the transaction is carried out in 2 (two) ways, namely legislation, which is consumer protection based on laws and regulations that have been made as a form of restrictions and provisions governing transactions that occur between business actors and consumers, secondly, voluntary self-regulation, which can voluntarily regulate and make rules for business actors to be more careful and vigilant in carrying out their business activities including in the production process.<sup>43</sup>

Meanwhile, in the mechanism of consumer protection after the transaction is carried out by the District Court (PN) or by out-of-court settlement with the Consumer Disputes Settlement Office (BPSK). From these 2 (two) mechanisms, this consumer protection

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<sup>42</sup> Johanes Gunawan, Op.Cit, Page. 3.

<sup>43</sup> Ibid, Page. 4.

is related to the realisation of the fulfilment of consumer rights, generally known as the existence of 4 (four) basic rights of consumers, namely the right to obtain safety (the right to safety), the right to obtain information (the right to be informed), the right to choose (the right to choose) and finally the right to be heard (the right to be heard).<sup>44</sup>

Respecting these rights is one way of trying to avoid conflict in consumer disputes. In principle, in business activities it is expected that there will be no disputes between business actors and consumers, but this cannot be avoided, so conflicts between business actors and consumers often occur. This problem can be caused by some form of violation of laws and regulations, misunderstanding, failure to keep an agreement (promise), conflict of interest with each other, resulting in losses for one party.

According to Shidarta, consumer disputes are violations of consumer rights, the scope of which is either civil, criminal or state administration, so the term "consumer transaction disputes" is not used because the latter seems narrower, only civil problems.<sup>45</sup> Any dispute can be said to be a dispute between consumers in a legal relationship over a particular consumer product.<sup>46</sup> According to Article 23 of the Consumer Protection Act, the consumer has the right to submit the dispute to the Consumer Disputes Settlement

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<sup>44</sup> Gunawan Widjaja and Ahmad Yani, *Hukum Tentang Perlindungan Konsumen* (Jakarta: Gramedia Pustaka Utama, 2000), 27-28.

<sup>45</sup> Shidarta, *Hukum Perlindungan Konsumen* (Jakarta: Gramedia Widiasarana Indonesia, 2004), 165.

<sup>46</sup> A Z Nasution, *Konsumen Dan Hukum: Tinjauan Sosial Ekonomi Dan Hukum Perlindungan Konsumen Indonesia* (Jakarta: Sinar Harapan, 1995), 178.

Body (BPSK) or by filing a lawsuit with the court at the consumer's place of residence.

Article 45 of the UUPK also mentions the same in the resolution of this dispute:

- a. An aggrieved consumer may sue the economic operator through a body responsible for resolving disputes between consumers and economic operators or through the courts in his locality;
- b. The settlement of consumer disputes may be pursued in court or out of court on the basis of an agreement between the parties to the dispute;
- c. Out-of-court settlement does not exclude criminal liability;
- d. If out-of-court settlement is chosen, the court has the right to settle only if it is declared unsuccessful.

On the other hand, there is a role for the LPKSM, which is actually needed as a party that can play a role in the resolution of disputes between economic operators and consumers. The LPKSM has duties and functions in the UUPK Act, one of which is to receive complaints and to fight for consumer rights. A mediation process is needed at the LPKSM level in order to resolve disputes at the first level before they reach the BPSK or the courts. It is hoped that the method of voluntary self-regulation can be applied in the LPKSM so that it has the authority to resolve conflicts as early as possible. The

main obstacles faced by the BPSK in applying the provisions of the UUPK Act are as follows:<sup>47</sup>

- a. Institutional constraints of the BPSK itself;
- b. Constraints regarding the budget of the BPSK, which is a burden for the APBD;
- c. Constraints related to human resources (HR), which are still very limited;
- d. Legislative constraints that require immediate revision of the UUPK Law;
- e. Constraints in the supervision and guidance of the BPSK, as evidenced by the low level of coordination from the lower to the upper level;
- f. Limitations in the lack of public information on consumer policy.

For this reason, the application of the Voluntary Self-Regulation concept to LPKSM needs to be facilitated as much as possible and supported by relevant stakeholders from both government and society. Voluntary Self Regulation does not only focus on the rules of business actors, but can be applied to LPKSM as a preventive effort against actions of business actors. The concern is that voluntary self-regulation of business actors without the involvement of parties from LPKSM can be subjective, so that it only benefits the position of business actors.

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<sup>47</sup> Yatini and Wahyuni Safitri, "Settlement of Consumer Disputes at the Samarinda City Consumer Dispute Resolution Agency (BPSK)," *Jurnal Yuriska (Jurnal Ilmiah Hukum)* 7, no. 2 (2015): 90.

LPKSM must be able to act as an arbiter of problems between business actors and consumers through the rules of the consumer dispute resolution process, using the Voluntary Self Regulation method. Voluntary self-regulation in LPKSM is very important to protect the interests of consumers and to support the government. It is expected that the role of LPKSM will be expanded; in practice, LPKSM can conduct mediation and negotiations that are quasi-judicial in nature.<sup>48</sup> As LPKSM's role expands, it must be carried out and implemented by parties or personnel with real mediation and negotiation skills and extensive knowledge of consumer protection rules. This is a form of anticipation so that there are not many practices that violate the law by irresponsible parties, such as extortion and fraud.<sup>49</sup>

Laws are created as a form of human interest that is adapted to the times as well as to changing conditions, situations, times and places. This is done as a form of effort to meet human needs.<sup>50</sup> The law must be able to act before there is a legal event. In accordance with the times in the voluntary self-regulation mechanism in LPKSM as a concrete manifestation of legal change in a modern view, so it is necessary to have legislation that can regulate the expansion of the role of LPKSM in resolving consumer disputes with the voluntary self-regulation mechanism. The problem is that LPKSM is currently limited to advising the parties and there is no obligation to resolve consumer disputes to the end, especially since

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<sup>48</sup> Luthvi Febryka Nola. Op.Cit. Page. 191.

<sup>49</sup> Ibid.

<sup>50</sup> H Abdul Manan and S Sh, *Aspek-Aspek Pengubah Hukum* (Jakarta: Prenada Media, 2018), 4.

LPKSM is still not widely known by the general public, which affects the number of consumer disputes that lead directly to the BPSK or the court.

A massive public awareness campaign is needed, including the use of educational media, both traditional and electronic. The LPKSM, as a voluntary self-regulatory body, is in a position to assist various parties, in particular economic operators and consumers, quickly and cost-effectively in resolving disputes at the lowest level before they reach the BPSK or the courts. In business dispute resolution, emphasis is always placed on the level of efficiency and effectiveness through out-of-court dispute resolution.<sup>51</sup>

One form that has been implemented by consumer associations is in Malaysia, namely the existence of ERA Consumer Malaysia, which has its own unit to deal with consumer problems through the mediation process, namely the National Consumer Complaint Centre (NCCC). The NCCC's role is to receive complaints from consumers, negotiate with the parties and, if the company is found guilty, compensate the consumers.<sup>52</sup> The authority of the LPKSM should be seriously supervised and monitored by the government, both local, provincial and even central. Efforts to strengthen the position of LPKSM in resolving consumer disputes must be strictly regulated in terms of definition, nature and even the activities that will be carried out solely for the benefit of

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<sup>51</sup> Erman Rajagukguk, "Legal Culture and Out-of-Court Civil Dispute Resolution," *Jurnal Magister Hukum* 2, no. 4 (2000): 7.

<sup>52</sup> Zuryani and Mohd Zeti Zakuan, "Institutional Framework as a Consumer Protection Framework in Malaysia," *Proceedings of International Conference on Consumerism 2013 (ICC2013)*, 2013, 53-54.



consumers. Mediation is an appropriate method as a form of voluntary self-regulation. The mediator acts as an intermediary and advisor between the parties to the dispute until the parties reach an agreement.<sup>53</sup>

The LPKSM acts as a third party, an outsider who is declared to be neutral (impartial) and who makes it easier for the parties to come to an agreement. The benefits of resolving consumer disputes are quick, inexpensive and confidential, and can even be described as a form of win-win settlement (there is no winning or losing), as set out in a joint peace deed. Law as a tool to obtain logical, fixed and closed values, this is done by logical thinking about legal regulations and can exclude good and bad values.<sup>54</sup>

In principle, the change in the concept of legal structure in LPKSM will provide a more efficient and effective position in protecting consumer interests. The changed legal structure is to carry out the stages in the procedural law as with the mediation method in the LPKSM, so as to be able to provide opportunities for the parties to be resolved with mutual benefit to one another. Business actors and consumers will both obtain a decision that is favorable to both parties from LPKSM. Until now, LPKSM has not been able to make settlements as in the mediation process, LPKSM is only able to provide consumer assistance at the judicial body stage or outside the court through BPSK. It is time for LPKSM to be

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<sup>53</sup> Yusuf Shofie, Op.Cit. Page. 23.

<sup>54</sup> Roni Sulistyanto Luhukay and Hartanto Hartanto, "The Urgency of Implementing Local Lockdown to Prevent the Spread of Covid-19 Viewed from the Perspective of the Unitary State," ADIL Indonesia Journal 2, no. 2 (2020): 42.

at the forefront of resolving consumer disputes that are authorized in lawyers, so that problems will not gradually move to higher stages above. This is a manifestation of the LPKSM's authority in fighting for consumer rights over complaints of losses from consumers. LPKSM is expected to be able to organize mediation sessions at the LPKSM level in accordance with the provisions of laws and regulations. This is also a form of anticipation so that BPSK in giving BPSK decisions is not annulled by the Supreme Court (MA), so that through the hearing at LPKSM is able to minimize the possibility of errors in the realm of authority of the institution. In principle, LPKSM is currently only given the right to sue in the judicial body or outside the court, but in this case there is great hope that LPKSM can have authority in the trial process at LPKSM as a form of change in legal structure which will also have an impact on changes in legal substance. Through changes in legal structure and legal substance, it will further strengthen the position of LPKSM from its role and authority in providing protection to consumers violated by business actors.

## **IV. Conclusion**

The role of LPKSM in the process of resolving consumer disputes in the state is important to provide protection to consumers in obtaining justice as stated in Article 44 of UUPK, namely by disseminating information on consumer rights and obligations,

providing advice to consumers, cooperating with agencies, receiving complaints and complaints from consumers and fighting for consumer rights, and making joint supervisory efforts with the government in order to provide protection to consumers. LPKSM currently functions also to advocate or assist consumers who are harmed by business actors both in the realm of court and outside the court such as BPSK through mediation, conciliation, and arbitration. LPKSM must be able to take responsibility for resolving consumer disputes from public complaints. In fact, currently there are more complaints filed at LPKSM than directly to the Consumer Dispute Resolution Agency (BPSK). This is because LPKSM is closer to the community and has a vision and role that aims to make peace efforts towards the parties. YLKI is one of the institutions of LPKSM that has not been able to conduct trials because it does not have the authority to do so, so YLKI is only able to provide assistance to BPSK. It is hoped that changes in the legal structure and legal substance of LPKSM should be able to play a role in applying procedural law and organizing the trial process. LPKSM is not only able to provide advice and counsel to the parties, but is also able to place both parties in a good position and seek a win-win solution. LPKSM is expected to be able to litigate through the mediation mechanism with a decision in the form of a peace deed legal product. YLKI's role as one of the LPKSMs that exist to date in consumer protection in Indonesia is as follows:

- a. It must exclusively represent the interests of consumers;

- b. The progress of trade will not be meaningful if it harms consumers;
- c. The profile of its activities must be non-profit;
- d. Must not accept advertisements for commercial reasons;
- e. Shall not exploit information and advice for the sole purpose of trade;
- f. There should be no influence of sponsorship messages on actions and comments.

The concept of Voluntary Self Regulation Mechanism carried out by LPKSM in Settling Consumer Disputes LPKSM has the authority in Voluntary Self Regulation. This is able to help various parties, especially business actors with consumers quickly and cheaply, so that it can be resolved at the lowest level before reaching the BPSK or court level. Currently, there are still many BPSK decisions that are annulled by the Supreme Court (MA) because it is not the realm of BPSK in resolving the dispute, so that with the existence of this Voluntary Self Regulation mechanism, LPKSM will be able to filter the incoming disputes in advance and there is great hope that it can be resolved completely in the realm of LPKSM. This LPKSM mechanism aims to realize the principle of equality between business actors and consumers, so Mediation is the right method to be applied at LPKSM as a form of Voluntary Self Regulation. Mediation is active as an intermediary and advisor in the disputing parties to the point of settlement agreed by the parties. LPKSM acts as a third party, an outside party that is declared neutral (impartial) that facilitates the parties to agree. The

advantages that can be obtained from the settlement of consumer disputes will be quickly realized, low cost and confidential in nature and can even be said to be a form of win-win solution (there is no win or lose) as outlined in a joint peace deed. The efforts made by LPKSM through the Voluntary Self Regulation mechanism should be well facilitated, so that LPKSM in resolving consumer problems will be resolved more quickly. With the Voluntary Self Regulation mechanism, the settlement process must be carried out with a win-win solution approach to the parties, before leading to settlement at the BPSK or Court level. The concept of dispute resolution mechanisms in LPKSM should also be accommodated in the revision or changes to the structure of the trial procedure law and including the legal substance in the revision of laws and regulations including the Consumer Protection Law Number 8 of 1999 concerning Consumer Protection and its implementing rules.

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