

Optimizing the Role of The Consumer Dispute Resolution Agency (BPSK) Through the Reformulation of Government Regulation Number 80 of 2019

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Abstract

The e-commerce transaction dispute resolution mechanism in Government Regulation of Trade Through Electronic Systems is considered inefficient and does not provide legal certainty for consumers and for business actors considering the existence of several similar regulations that have existed before. This study aims to determine that the implementation of Government Regulation Number 80 of 2019 has added an alternative mechanism for e-commerce transaction dispute resolution which is actually considered convoluted, inefficient and does not provide legal certainty. Through the normative juridical research method, which is the approach to the problem by seeing, analysing and interpreting theoretical matters concerning legal principles in the form of conceptions, statutory regulations, views, legal doctrines and related legal systems. In this study, the authors have the opinion that in an effort to realize legal certainty, legal simplification, legal unity and the realization of a fast, simple and low cost dispute resolution, it is necessary to make efforts to establish legal norms through reformulation of PP. 80 of 2019 concerning Trade Through Electronic Systems.

Keywords: *electronic commerce; legal certainty; legal formation through legal reformulation.*

Abstrak

Mekanisme penyelesaian sengketa transaksi e-commerce dalam PP PSME dinilai kurang efisien dan tidak memberikan kepastian hukum bagi konsumen maupun bagi para pelaku usaha mengingat terdapatnya beberapa peraturan yang sejenis yang telah ada sebelumnya. Penelitian ini bertujuan untuk mengetahui bahwa dengan telah diberlakukannya PP No. 80 Tahun 2019 tersebut telah menambah alternatif mekanisme penyelesaian sengketa transaksi e-commerce yang justru dianggap berbelit-belit, tidak efisien dan tidak memberikan kepastian hukum. Melalui metode penelitian yuridis normatif, yaitu pendekatan masalah dengan melihat, menelaah dan menginterpretasikan hal-hal yang bersifat teoritis yang menyangkut asas-asas hukum yang berupa konsepsi, peraturan perundang-undangan, pandangan, doktrin hukum dan sistem hukum yang berkaitan. Dalam penelitian ini, penulis memiliki pendapat bahwa dalam upaya mewujudkan kepastian hukum, penyederhanaan hukum, kesatuan hukum dan terwujudnya penyelesaian sengketa secara cepat, sederhana dan dengan biaya yang ringan, perlu adanya upaya untuk melakukan pembentukan norma hukum melalui reformulasi PP No. 80 Tahun 2019 tentang Perdagangan Melalui Sistem Elektronik.

Kata kunci: *Perdagangan elektronik; Kepastian hukum; Pembentukan hukum melalui reformulasi hukum.*

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Introduction

The development of information and technology, which is constantly evolving, creates innovation in the business sector and improves the economy through the electronic trading system, which is currently growing rapidly in society. As part of the effort to improve people's welfare, the government supports this through legal

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infrastructure and regulations with the aim that the use of technology in the trade sector through electronic systems can be carried out safely. The economic progress cannot be separated from business activities both in the goods and services sectors.

However, apart from having a positive impact, it also creates a negative impact that creates disputes or conflicts between consumers and business actors. The dispute or conflict arises from various backgrounds, including a lack of understanding of consumers' rights; on the other hand, business actors seek as much profit as possible, the position of business actors and consumers is not balanced, consumers are used as objects of new business activities through promotions and/or advertisements, a standard class that is detrimental to consumers.

According to Ronny Hanitijo, conflict is a situation (situation) between two or more people fighting for their respective goals that cannot be unified and where each party tries to convince the other party about the correctness of the reference (Afrilia & Sulistyaningrum, 2017). In Article 1 point 8 Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001, what is meant by consumer dispute is a dispute between business actors and consumers demanding compensation or compensation for losses suffered by consumers.

The number of consumer dispute cases in Indonesia in the last 5 (five) years between 2013 and 2017 is as follows:

Table 1. Number of consumer disputes from 2013 to 2017

No	Year	Number of Case
1	2013	151
2	2014	177
3	2015	177
4	2016	90
5	2017	60

Source :<https://smartlegal.id>

Table 1 shows that there has been a decrease in the number of consumer dispute cases. This is because although there are several principles in e-commerce transactions such as the agreement of the parties (consensus), the principle of freedom to choose ways of dispute resolution, the principle of freedom to choose the law, and the principle of good faith. However, in practice, disputes cannot be avoided. The dispute is a continuation of an unsolved conflict. Because of this, the importance of consumer protection. Protection for consumers is an effort to create legal certainty (Putri et al., 2017).

Protection is a right granted by the government to society in the form of security, comfort. The position of society as a weak consumer is obliged to obtain legal protection. The occurrence can see these weaknesses of defaults carried out by business actors in online buying and selling (e-commerce). Because of this, the government has a duty to prevent and handle consumer disputes (Astari et al., 2020).

Consumers, as part of Indonesian society who have the right to be protected. Through the Law Number 8 of 1999 concerning Consumer Protection (Undang-undang

Perlindungan Konsumen (UUPK)), the government has regulated its legal protection, but not all and/or consumers who have suffered losses have the desire to sue business actors and ask for compensation because they do not want to disagree; the time to file a lawsuit requires quite a long time, energy and even costs are not small, lack of understanding of the Consumer Protection Act which provides alternative dispute resolution apart from the court can also be done through Consumer Dispute Resolution Agency (Badan Penyelesaian Sengketa Konsumen (BPSK) (Putri et al., 2017). In general, if consumers do not want to make the efforts mentioned above, consumers usually stop being consumers of the business actor's products or move to look for similar products with other brands.

In general, consumer disputes are caused by several things, including that consumers have limited financial capacity, consumers do not have a good bargaining position, consumers do not have a choice in choosing products, consumers do not understand their rights as consumers, consumers do not understand legal remedies that can be carried out to resolve disputes, the impact of unfair business competition and so on.

In practice, there are still BPSK decisions that experience obstacles in their enforcement because legal proceedings can still be taken to court. Thus, there will be disharmony of laws and regulations. The importance of harmonizing laws and regulations is considered by some people (in this case, the executive agency) to have no legal implications for implementing laws and regulations. However, this will be important if legal problems arise in practice (Suwandi, 2018), As an example, which is where a BPSK decision is filed for objection or cancellation. Meanwhile, Article 54 paragraph (3) of the UUPK states that the BPSK council's decision is final and binding. This means that the clause "final" means that no more legal remedies can be made. Meanwhile, Article 56 paragraph (2) of the Company Law states that the parties can submit objections no later than 14 (fourteen) working days to the Court. Thus there is a legal norm that is contradictory between Article 54 and Article 56 of the UUPK.

In terms of dispute resolution outside the court, referring to Article 52 of UUPK states that the institution that resolves consumer disputes outside the court is the BPSK through mediation or arbitration, or conciliation. Meanwhile, Article 18 paragraph (1) Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems (Perdagangan Melalui Sistem Elektronik (PMSE)) states that if a consumer dispute occurs, the consumer can report the loss through the Minister. Of the two provisions above, there are different complaint mechanisms, which is through BPSK and through the UUPK and complaints through the Minister, as stated in the PMSE. Disharmonization of this arrangement will lead to multiple interpretations in the legal force of the BPSK decision and legal remedies for consumer dispute resolution complaints that lead to multiple interpretations, whether through BPSK or the Minister after the issuance of the PMSE. Based on UUPK, consumers can sue business actors because consumers who have been injured have the right to get compensation, compensation, or compensation. Meanwhile, dispute resolution through litigation or court proceedings still refers to the general court's

provisions in force in Indonesia. If there is an element of a criminal act, the consumer can first report it to the authorities. Meanwhile, if there is a civil element, consumers can file a lawsuit in court.

BPSK is an autonomous body outside the court that can resolve consumer disputes through mediation, reconciliation, or arbitration. As for the legal basis for BPSK in carrying out its duties and authorities, they are listed in (Pratama, 2018):

1. Presidential Decree No. 90 of 2001 concerning the Establishment of Consumer Dispute Resolution Bodies in the Government of Medan City, Palembang City, Central Jakarta City, West Jakarta City, Bandung City, Semarang City, Yogyakarta City, Surabaya City, Malang City, Makassar City;
2. Presidential Decree No. 108 of 2004 concerning the Establishment of a Consumer Dispute Resolution Agency for the Government of Kupang City, Samarinda City, Sukabumi City, Bogor City, Kediri City, Mataram City, Palangkaraya City and Kupang Regency, Belitung Regency, Sukabumi Regency, Bulungan Regency, Serang Regency, Ogan Komering Ulu Regency and Jeneponto Regency;
3. Presidential Decree No. 18 of 2005 concerning the Establishment of Consumer Dispute Resolution Bodies in the Municipal Government of Padang, Tangerang Regency, Indramayu Regency, and Bandung Regency;
4. Decree of the Minister of Industry and Trade No. 301/MPP/Kep/10/2001 concerning Appointment, Dismissal of Members and Secretariat of Consumer Dispute Resolution Bodies;
5. Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 concerning Implementation of Duties and Authorities of Consumer Dispute Resolution Bodies;
6. Decree of the Minister of Industry and Trade No. 605/MPP/Kep/8/2002 concerning the Appointment of Members of the Consumer Dispute Resolution Bodies in the Government of Makassar City, Palembang City, Surabaya City, Bandung City, Semarang City, Yogyakarta City, and Medan City;
7. Decree of the Minister of Industry and Trade No. 794/MPP/Kep/12/2002 concerning the appointment of Members of the Consumer Dispute Resolution Board at the Malang City Government;
8. Decree of the Minister of Industry and Trade No. 231/MPP/Kep/3/2003 concerning the Appointment of the Head of the Secretariat and Members of the Secretariat of the Consumer Dispute Resolution Bodies at the Government of Bandung City, Semarang City and Surabaya City;
9. Decree of the Minister of Industry and Trade No. 704/MPP/Kep/3/2003 concerning the Appointment of the Head of the Secretariat and Members of the Secretariat of the Consumer Dispute Resolution Board at the Government of Malang City;
10. Decree of the Director General of Domestic Trade No. 24/DJPDN/Kep/VIII/2002 regarding the Implementation Guidelines for the Election of the Chairperson, Deputy Chairperson, Head of the Secretariat and Secretariat Members of the Consumer Dispute Resolution Agency (BPSK);

11. Presidential Decree No. 5 of 2012 concerning the Establishment of Consumer Dispute Resolution Bodies in Central Lampung Regency, Paser Regency, Purwakarta Regency, North Tapanuli Regency, Barru Regency and Cirebon Regency as well as Bandar Lampung City and Tanjung Balai City.

In The Hirachi of law theory, Hans Kelsen states that between the hierarchy of laws and regulations, the most basic unit is formed up to the highest value called *grundnorm*, as stated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations. Invitation. This means that one regulation must not conflict with a higher regulation or between one article and another article in statutory regulation (Permatasari et al., 2020).

Research Problems

Based on the background explanation above, the problems to research are: *first*, how to resolve consumer disputes on e-commerce transactions in Law Number 8 of 1999 concerning Consumer Protection in an effort to achieve legal certainty, benefit and justice?; and *second*, how to resolve consumer disputes on e-commerce transactions after the enactment of Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems in an effort to achieve legal certainty, benefit and justice?

Research Methods

The approach method used in this study is a normative juridical approach. The research specification uses an analytical descriptive method. In this study, the research object is the optimization of the role of the consumer dispute resolution agency (BPSK) through the reformulation of Government Regulation Number 80 of 2019 concerning trading through electronic systems to realize legal certainty.

Discussion

Resolution of Consumer Disputes in E-Commerce Transactions in Law Number 8 of 1999 concerning Consumer Protection in Efforts to Achieve Legal Certainty, Benefit and Justice

Initially, dispute resolution was carried out by local customary law, but with the existence of a written law the community began to leave and preferred to settle disputes recognized by the government because it was considered to provide more legal certainty (Rahmawanti & Lubis, 2014). The development of science and technology provides benefits, especially in e-commerce transactions that previously did not exist, where opportunities to get goods and services according to community needs can be opened widely and quickly (Muskibah, 2010). In e-commerce transactions, there are disputes between business actors and consumers, where these disputes can harm and damage the relationship between consumers and business actors. Indonesia, as the rule of law, must guarantee legal certainty for all its citizens (Taufikurrahman, 2015).

The basis for the issuance of Law Number 8 of 1999 includes creating a healthy economy in the process of national economic development, and at the same time, consumers are not disadvantaged. In this regard, it is necessary to have a legal instrument that guarantees consumer protection as a form of the responsibility of business actors and consumer awareness of their rights (Alkostar, 2004). Based on the provisions of Article 8 of the UUPK, it regulates actions prohibited by law, which reads:

- (1) Entrepreneurs are prohibited from producing and/or trading goods and/or services which:
 - a. Does not meet or is not by the required standards and provisions of laws and regulations.
 - b. Not according to net weight, net content or net, and the amount calculated according to the actual size.
 - c. Not according to the size, measure, and several calculations according to the actual size.
 - d. Not by the conditions, guarantees, features, or efficacy, as stated in the label, label, or description of the goods and/or services.
 - e. Not in accordance with the quality, level, composition, processing, style, mode or use as stated in the label or description of the said goods and/or services.
 - f. Not in accordance with the promise stated in the label, label, description, advertisement, or sale promotion of the said goods and/or services.
 - g. Does not include the expiration or period of use/utilization that is best for certain goods.
 - h. Does not comply with the provisions of halal production, as stated in the halal statement on the label.
 - i. Do not attach labels or make descriptions of goods containing the name of the goods, size, weight/content of net or net weight, composition, rules of use, date of manufacture, side effects, names and addresses of business actors, as well as other information for use according to the provisions that must be installed/made.
 - j. Does not include information and/or instructions for the use of goods in Indonesian in accordance with the provisions of the legislation in force.
- (2) business actors are prohibited from trading goods that are damaged, defective or used, and tainted without providing complete and correct information on the goods in question.
- (3) business actors are prohibited from trading damaged, defective or used and tainted pharmaceutical and food preparations with or without providing complete information.

Besides, based on the provisions of Article 23, UUPK determines that business actors who refuse and/or do not respond to consumer demands as provided for in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) can be sued. Through BPSK or the Local District Court. Based on this, the business actor's violation of the provisions of Article 8 of the UUPK, consumers are entitled to compensation and compensation as

referred to in Article 4 letter h of the UUPK. Besides, in Article 19 (1) UUPK, business actors are responsible for providing compensation for damage, pollution, and/or loss to consumers due to consumer goods and/or services produced or traded. According to the provisions of Article 19 (2) UUPK, compensation, as referred to in paragraph (1), can be in the form of refunds or replacement of goods and/services of a similar or equivalent value or health care and/or provision of compensation by the provisions of laws applies. In connection with the provisions above, based on paragraph (3) provisions, the compensation shall be made within a grace period of 7 (seven) days after the date of the transaction. However, there are exceptions if it can be proven wrong by the consumer.

According to Article 1 number 11 UUPK and Article 1 point 1 Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, the Consumer Dispute Resolution Agency is an agency in charge of handling and resolving disputes between business actors and consumers. This is supported by Article 49 paragraph (1) of the UUPK, which states that the government establishes a consumer dispute settlement agency in the second level regions to resolve consumer disputes outside the court. Besides, the Government issued Presidential Decree No. 90 of 2001 concerning Dispute Resolution Bodies in 10 City Governments, which is: Medan City, Palembang City, Central Jakarta City, West Jakarta City, Bandung City, Semarang City, Yogyakarta City, Surabaya City, Malang City, and Makassar City.

In the UUPK, dispute resolution can be resolved through litigation (court) and non-litigation (outside court). This is regulated from Article 45 to Article 48. Litigation efforts are carried out through a lawsuit to court. Meanwhile, non-litigation efforts can be pursued in several ways, which is through peace between the two parties or through conciliation or mediation or through arbitration, which is seen as a win-win solution. (Rusli, 2014). The non-litigation effort is intended to realize an agreement on the form and amount of compensation and/or certain actions so that it does not occur again, which is a consumer loss as specified in Article 47 of the UUPK. However, if the dispute resolution efforts through non-litigation are not successful, litigation efforts can be pursued.

Negotiation is the basis for dispute resolution through mediation because mediation negotiations and bargaining are carried out between the parties. In the Circular of the Directorate General of Domestic Trade No. 40/PDN/02/2010, The year 2010 is divided into 3 (three) stages the pre-mediation stage, the mediation stage, and the follow-up handling stage. Mediation is led by an official who acts as a mediator and is assisted by a journalist. The mediator conveys the mediation rules that must be obeyed by the parties as well as conveying the principles of handling to resolve consumer disputes, convey the rights and obligations of the parties, provide opportunities for parties to convey their problems and hopes, and convey solutions to consumer disputes towards a win-win solution. If the parties agree to the mediation results, the minutes are signed by the parties, the mediator, and the witnesses. Meanwhile, if the results of the mediation do not result in an agreement between the parties, then the mediator will give the opportunity not longer than 5 (five) working days to complete evidence of rebuttal to consumer demands and determine the

time for further mediation. If it does not lead to an agreement between the parties, the Mediator recommends that it be resolved at the local District Court, and the parties sign the minutes, then the complaint is declared complete. The process of resolving consumer disputes through mediation is carried out no later than 12 (twelve) working days from when the registration and registration of complaints are declared correct and complete (Dewi & Pujawan, 2013).

According to William, there are 4 (four) stages must be passed in the negotiation, which is: the orientation and position adjustment stage, the argumentation stage, the emergency, the critical attitude stage, and the agreement drafting stage. In the orientation and position-setting stage, the negotiator raises the problem in general and develops an opening position. There are 3 (three) opening positions, which is the maximalist position, where the negotiator asks for something more than what is really needed and tries to make the highest possible request, an equitable position, where the negotiator will ask according to what he needs, an integrative position, here the negotiator tries to reach an agreement in the mutual interest. In the second stage, which is the argumentation stage, each party provides a clear main picture and what concessions can be granted or developed. In the third stage, which is the emergency, and critical stages, at this stage, the negotiators prepare alternatives to overcome the deadlock. The fourth stage is the agreement stage, where at this stage, the parties draft an agreement and form an agreement signed by the parties (Mamudji, 2017).

The mediation process is critical because the parties' peace is the highest value in the dispute resolution process. It is resolved by consensus, low costs, short settlement time, and other benefits or benefits. This is supported by the intention of issuing Supreme Court Regulation Number 2 of 2003 concerning Mediation Procedures in Courts is for (Bintoro & Sudrajat, 2008):

- a. Reducing the problem of case accumulation:
- b. Is a dispute resolution process that is considered faster and cheaper and can provide the widest possible access to the parties in a case to obtain justice;
- c. Strengthening and maximizing the function of court institutions in dispute resolution in addition to the adjudicative process;
- d. As a further improvement SEMA No. 1 of 2002 concerning Empowerment of First Level Courts to Implement Peaceful Institutions (Ex. Article 130 HIR/Rbg);
- e. Encourage the parties to pursue a peace process that can be invested by integrating the mediation process into the litigation procedure at the District Court.

BPSK is a special agency established in each Level II Region in resolving consumer disputes outside the court. In Article 52 UUPK in conjunction with Article 3 letter a The Decree of the Minister of Industry and Trade is stated regarding the duties and authorities of BPSK, among others (Emping, 2019):

- a. Carry out the handling and settlement of consumer disputes by means of mediation or arbitration or a coalition;
- b. Provide consumer protection consultation;

- c. Supervise the inclusion of standard clauses;
- d. Report to general investigators if there is a violation of the provisions of this law;
- e. Receive both written and unwritten complaints from consumers regarding violations of consumer protection;
- f. Conduct research and examination of consumer protection disputes;
- g. Summons business actors who are suspected of having violated consumer protection;
- h. Summon and present witnesses, expert witnesses and/or any person deemed to have knowledge of violations of this law;
- i. Requesting assistance from investigators to present business actors, expert witnesses or any person as referred to in letters g and h who are not willing to comply with the summons of consumer dispute settlement agencies;
- j. Obtain, examine and/or assess letters, documents or other evidence for investigation and/or examination;
- k. Decide and determine whether or not there is a loss on the part of the consumer;
- l. Imposing administrative sanctions on business actors who violate the provisions of this law.

In the United Nations Resolution Number 39/248 concerning Consumer Protection dated April 16, 1985, known as the UN Guidelines on Customer Protection, which can be used as the basis for the existence of BPSK in dispute resolution. This is because there are 4 (four) main points that can be used as a reference, which is: (1) the government provides an adequate basic framework for implementing consumer protection policies; (2) the government recommends business actors to resolve consumer disputes quickly and informally; (3)) The government establishes appropriate laws in obtaining compensation through fast, simple, and low-cost methods; and (4) The government supports consumer organizations in carrying out education and information programs (Shofie, 2013).

Based on the provisions of Article 49 to Article 50 of the UUPK, which states that in resolving disputes, BPSK consists of government elements, business actors, and consumers, BPSK is appointed and dismissed by the Minister of Industry and Trade. BPSK has the authority to resolve consumer disputes through mediation, or conciliation, and others. In dispute resolution through BPSK, first of all, it begins with a written or unwritten request from the victim who has suffered a loss; on this request, BPSK then forms an assembly of at least 3 (three) people, which is a panel of judges consisting of the chairman of the panel, 2 (two) member judges and assisted by a clerk (Taufikurrahman, 2015). The UUPK gives authority to BPSK in resolving consumer disputes. Still, the UUPK does not regulate the division of tasks between the members as the mediator, so that a tiered process is needed in its resolution, meaning that first through mediation, if it fails, then through conciliation, and if it still fails, then efforts to resolve its arbitration (Wibawa & Suharta, 2016).

In conciliation, which is an initiative of one party or both parties to propose efforts to resolve consumer disputes, in this case, BPSK is passive and acts as a conciliator, which is clarifying the problems that occur, bringing together different views between the parties

so that an agreement between the parties is obtained. resolving disputes, which is in the form of compensation and others (Fibrianti, 2015). The results of the deliberations were determined as BPSK decisions.

Apart from being one of the non-litigation efforts, mediation is also part of litigation efforts; this is because, in the implementation of a decision that has permanent legal force, it is mandatory to make settlement efforts through mediation. The mediator is active in the mechanism, providing advice, suggestions, directions, and other efforts to get mutual agreement between the two parties through deliberation and kinship (Hadiati & Tampi, 2017). The results of the deliberations were determined as BPSK decisions.

Settlement of disputes through arbitration, the decision is not an appeal even though legal remedies can be made in the form of cancellation or implementation of an arbitration award is rejected. In arbitration, before entering into the arbitration procedure mechanism, both parties must make an arbitration agreement in advance either using the arbitration class in an arbitration agreement or an arbitration agreement made separately. Settlement through this arbitration can be done on an ad hoc or permanent basis or institutionally (Salami & Bintoro, 2013).

Of the three non-litigation dispute resolution methods, Article 54 paragraph (3) of the UUPK states that the BPSK decision is final and binding, meaning no legal remedy. Still, Article 56 UUPK states that regarding objections to the BPSK decision, it can submit objections to the court. Besides, the BPSK decision can only be executed after the District Court issues the execution fiat; with legal remedies as referred to in Article 56 of the UUPK, there is an inconsistency in the laws (Atsar & Apriani, 2019). Besides, the UUPK and Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 stated that the BPSK decision was not final and binding not because structurally BPSK was under the Ministry of Trade, while the prevailing Judicial Powers Act to the Judiciary, but this is because it does not regulate the inclusion of the head of the decision (*irah-irah*) on the BPSK decision which results in the BPSK decision being able to take legal remedies through the Court (Kurniawan, 2012). In addition, dispute resolution through negotiation, mediation and conciliation as a form of ADR does not have coercive authority, because it is not an official court body (Diah, 2016) The resolution effort through non-litigation should be optimized, considering that consumers' position is weaker than the position of business actors in consumer disputes. Besides that, dispute resolution efforts through litigation require a longer period of time than settlement through BPSK. However, in the settlement through BPSK, some things need to be corrected: the unclear which institution can resolve consumer disputes and high costs that make the consumer protection system less effective (Rahmawanti & Lubis, 2014).

Article 70 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains the provisions for being able to submit objections to an arbitration award, which is:

- a. Letters or documents submitted during examination after the verdict is rendered are recognized as false or declared false;

- b. After the BPSK arbitration decision was taken, a decisive document was found which was hidden by the opposing party; or
- c. The verdict was taken based on the deception carried out by one of the parties in the dispute examination.

Referring to the basis for the formation of BPSK as described above, dispute resolution can be made quickly and at a low cost. This is because, through BPSK, a dispute must have been resolved within 21 working days. It is not possible to appeal; administratively and making decisions can be made alone, affordable costs by consumers, reducing the number of court cases that accumulate (Rangka, 2014). Furthermore, within a maximum period of 7 (seven) working days after receiving the BPSK decision, the business actor is obliged to carry out the decision as stipulated in Article 56 of the UUPK; furthermore, if one of the parties has an objection, it can submit an objection within 14 (fourteen) days to the District Court. Business actors who do not object are deemed to have accepted the BPSK decision. If the business actor does not carry this out, BPSK submits the decision to the investigator to investigate by the provisions of the laws and regulations because the BPSK decision can be used as sufficient initial evidence (Tamba, 2018).

In Article 60 paragraph (1) of the Company Law, the business actor is subject to administrative sanctions if the business actor violates Article 19 paragraph (2) and paragraph (3), Article 20, Article 25 and Article 26. As stipulated in Article 60 paragraph (2) of the Company Law, The administrative sanction is in the form of a stipulation of compensation at most Rp. 200,000,000,- (two hundred million rupiah). Furthermore, based on the provisions of Article 62 paragraph (1), (2) and paragraph (3) UUPK, it is stated that: (1) business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, paragraph (2) and Article 18 shall be punished with imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000,- (two billion rupiahs); (2) business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letter d and letter f will be sentenced to imprisonment of a maximum of 2 (two) years or a maximum fine of Rp. 500,000,000,- (five hundred million rupiah); (3) In respect of violations which result in serious injury, serious illness, permanent disability, or death, the applicable criminal provisions shall apply. Also, Article 63 UUPK regulates additional criminal sanctions in the form of confiscation of certain goods, the announcement of judges' decisions, payment of compensation, orders to stop certain activities that cause consumer losses, obligation to withdraw goods from circulation, or revoke business licenses.

Based on these provisions, there is a need for reconstruction and/or reformulation of legal norms related to the strength of BPSK decisions, which are final and binding, and the authority of BPSK in executing as agreed by the parties by the provisions of the applicable laws and regulations. This is because the word "or" in dispute resolution can be submitted through BPSK or the local District Court. The word "or" implies a choice that

has different consequences, which has become the parties' choice, which means the agreement between the parties and the parties is aware and aware of the legal consequences. However, if the BPSK decision can be filed, an objection becomes a matter of confusion and does not create legal certainty, as is the law's purpose. Therefore, the agreement of the parties must be viewed as a higher value. This is binding on the parties; even though there are advantages and disadvantages to resolving disputes through litigation or non-litigation, both must be considered final and binding to create legal certainty.

Consumer Dispute Resolution on E-Commerce Transactions after the enactment of Government Regulation No. 80 of 2019 concerning Trade through Electronic Systems in an Effort to Achieve Legal Certainty, Benefit and Justice

In the preamble of the fourth paragraph of the 1945 Indonesian Constitution, it was emphasized that the ideals of the Indonesian state, which is advancing the general welfare through national and international trade, which is a manifestation of economic improvement (BPHN, 2020). Currently, several international organizations regulate electronic transactions such as The United Nations Commission International Trade Law (UNCITRAL), European Union (EU), OECD, ASEAN, APEC, World Trade Organization (WTO), but those related to consumer protection not regulated as referred to in the Uncitral Model Law 1996. In general, buying and selling transactions through e-commerce are regulated in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (Informati dan Transaksi Elektronik (ITE)). In the ITE Law no. 19 of 2016 also does not regulate in detail the protection of e-commerce trade. The elucidation of Article 17 of the ITE Law paragraph (1) states that state administrators, individuals, business entities, and/or the public use information technology. The use of information technology must be carried out properly, wisely, responsibly, effectively, and efficiently to obtain maximum benefits for the community. Based on the law's explanation, it appears that there is no scope for the implementation **provisions that can be regulated in PP. 80 of 2019 concerning PSME so that legal certainty** has not been created in the community (Fitriana & Harun, 2020).

Basically, legal protection is an embodiment of the legal function of providing certainty, justice, and benefit. In addition to the role of the government as a regulator, it is also necessary to have the participation of the community as consumers to be critical as buyers and customer satisfaction orientation from producers (Murni & MTVM, 2020). Because of the growing development of trade through electronic systems as part of economic development, the government and the public can also increase their caution or self-awareness in dealing with potential consumer disputes. Therefore it is necessary to have a form of legal protection that is in line with the objectives of the law, in the sense that it is part of the international community and aims to improve the quality of life of the

nation based on the principles of legal certainty, justice and maximum benefit for the welfare of the people (BPHN, 2020).

To have confidence in e-commerce transactions, Ratnasingham said that there are several things that must be fulfilled, among others, which is (Bahtiar, 2020):

a. Business practice disclosure

The company must be open in conducting transactions electronically and conduct transactions in accordance with the agreements made with consumers.

b. Transaction integrity

This is control over all transactions carried out whether they are complete and in accordance with what was ordered or approved.

c. Information protection

Companies must maintain information about consumers so that they do not spread to parties that have nothing to do with the transactions being carried out.

The presence of Government Regulation Number 80 of 2019 concerning Trade Through Electronic Systems has provided legal certainty for e-commerce transactions, which includes not only buying and selling but also includes delivery system mechanisms, payment systems, electronic advertising, electronic contracts, PMSE communities, personal data protection, coaching and supervision, dispute resolution. Article 1 point 6 PSME defines PMSE business actors (business actors) as any individual or business entity in the form of a legal entity or non-legal entity that can be in domestic business actors and foreign business actors and conduct business activities in the PMSE sector.

Furthermore, Article 1 point 10 PSME defines that a merchant is a business actor who conducts PMSE either using which they are created and managed directly or through facilities owned by PMSE parties or other electronic systems that provide PMSE facilities. A trading operator through an electronic system, hereinafter abbreviated as PPMSE, is a business actor providing electronic communication facilities used for trading transactions as stipulated in Article 1 number 11 PMSE. It is also determined that as Article 1 point 13, intermediary service providers are domestic business actors or foreign business actors providing electronic communication facilities other than telecommunications operators, which only function as intermediaries in electronic communication between the sender and receiver.

However, in its implementation, several things need to be studied. Further, several articles need to be observed in these government regulations, especially the norms that apply in these laws and regulations, which is Article 7 PMSE states that (1) foreign business actors those who actively offer and/or conduct PMSEs to consumers who are domiciled in the jurisdiction of the Republic of Indonesia who meets certain criteria are deemed to have met a physical presence in Indonesia and conduct business activities regularly in the jurisdiction of the Republic of Indonesia; (2) certain criteria as intended in paragraph (1) can be: a. Number of transactions; b. Transaction value; c. Several delivery packages; and/or d. The amount of traffic or access; (3) overseas PMSE that meet the criteria as referred to in paragraph (2) must appoint representatives domiciled in the jurisdiction of

the Unitary State of the Republic of Indonesia who can act as and on behalf of the said business actor; (4) provisions for the appointment of representatives are carried out by the provisions of laws and regulations; (5) Further provisions regarding certain criteria as intended in paragraph (1) shall be regulated in a Ministerial Regulation. Based on this, the provisions regarding foreign business actors who actively conduct PMSE activities and/or offer to consumers within the Republic of Indonesia's jurisdiction and meet certain criteria must appoint representatives who act as and on behalf of the said business actor. The criteria referred to in the PMSE are the number of transactions, transaction value, number of delivery packages, and/or the amount of traffic or access. However, the ministerial decree has yet to be published. Based on this, it is necessary to have a Ministerial regulation as determined. The government needs to explain the meaning of "actively" in the provisions of the article.

Article 13 paragraph (1) letter a Government Regulation No. 80 of 2019 concerning Trade through Electronic Systems, which states that business actors are required to provide correct information regarding business actors' identity. About this Article, there must be a system that can control consumers not to be harmed in the online transaction activities. Researchers think that Article 13 is felt to have not been implemented properly; this is because not all business actors involved in online trading are legal. Therefore a policy is needed to accommodate individual business actors so that their legality and identity can be guaranteed with certainty. This can be seen from cases of inappropriate quality of goods, little information provided, inappropriate goods, risk of fraud, etc. The object in the electronic transaction cannot possibly be received electronically. Therefore consumers are allowed to cancel the agreement if the goods are not as expected. The accuracy of the information in online transactions is the essence of consumer protection. Therefore, it is necessary to reformulate these provisions.

Then in Article 15 paragraph (2) Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems, which states that intermediary facility operators are exempt from having a business license if they do not have the benefit of the transaction and business actors who are not directly involved in electronic transactions. Researchers argue that all business actors involved in online trading (e-commerce) must have a license to utilize electronic-based economic potential so that conventional business actors and startup business actors can see business potential and opportunities through online trading (e-commerce.). Besides, the government must make platform rules related to contracts in online trading transactions (e-commerce) and ensure that business actors are legality and not fictitious business actors so that consumers can easily identify business actors. Therefore, it is necessary to reformulate these provisions.

The PMSE stipulates that every business actor (including traders) conducting PMSE must comply with the provisions and/or requirements as determined, such as business license, technical license, TDP, NPWP, business code of ethics, standardization of goods products, and others. This can be seen in the provisions of Article 17 paragraph (1) of PMSE, which stipulates that PMSE, both from within and from abroad, is prohibited from

accepting traders from within or from abroad who do not comply with predetermined regulations or requirements. In the explanation of Article 5, PMSE states that sellers of goods and/or services temporally and non-commercially do not include traders. In this provision, it is not clear what is meant by the meaning of "temporal." Therefore, it is necessary to reformulate these provisions.

Furthermore, the provisions contained in Article 18 paragraph (1) Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems, which states that if a consumer dispute occurs, the consumer can report the loss through the Minister. The researcher argues that about consumer complaints, it is better to optimize the role of existing judicial institutions, which is through the BPSK and not necessarily through the Minister, which is considered very bureaucratic because consumer disputes are disputes of a special nature. Hence, they need to be resolved specifically, for example, by optimizing the role of existing institutions that are specialized in resolving consumer disputes. Therefore it is necessary to reformulate these provisions.

In Article 21 paragraph (1) PMSE stipulates that domestic and/or foreign PMSE must: (a) prioritize using Indonesian high-level domain names (dot id) for electronic systems in the form of internet sites; (b) prioritizing using internet protocol addresses (IP Address) by statutory provisions; (c) use server equipment that is placed in the data center by the provisions of laws and regulations; (d) register electronic systems by statutory provisions; (e) comply with the technical requirements stipulated by the relevant agency and obtain a reliability certificate by statutory provisions; (f) submit data and/or information periodically to government agencies that carry out government affairs in the field of statistics; (g) comply with the provisions of other sectoral laws and regulations relating to licensing for PMSE business activities. Based on these provisions, the clause "prioritized" is a condition that must be met; then what about those who are already using the dot com domain. Therefore, it is necessary to have a further explanation and technical implementation for the realization of legal certainty. Apart from this regulation, in Article 26, it is mandatory for business actors to protect consumer rights and comply with regulations in business competition. Researchers argue that these provisions are not yet optimal in enforcing the law because there are still several gaps in their implementation. It is important to have a clear oversight in every implementation. Therefore it is necessary to reformulate these provisions.

The provisions contained in Article 29 paragraph (2), which states that evidence in electronic transactions must use an electronic signature supported by a trusted electronic certificate. The researcher argues that although there is no evidence of an electronic signature in online buying and selling, there is other evidence that can show the occurrence of online transactions; it must be accepted as valid evidence at trial because this evidence can be seen from the equivalence of function and authenticity. Therefore it is necessary to reformulate these provisions.

Article 59 paragraph (2) letter h stipulates that personal data may not be sent to other countries or regions outside Indonesia unless the Minister states that the country or

region has the same standards and protection level as Indonesia. Based on these provisions, business actors who store personal data must have a security system by regulatory provisions to prevent data leakage and prevent unlawful use of personal data. The government must have data related to any country that can be used to manage personal data as referred to in that article.

Related to dispute settlement in trade through an electronic system, it has been regulated in Article 72 to Article 75 of Government Regulation No. 80 of 2019 concerning Trade Through Electronic Systems. Meanwhile, Law no. 8 of 1999 concerning Consumer Protection regulated in Article 45 to Article 48, and Law No. 11 of 2008 concerning Electronic Information and Transactions is regulated in Article 38 and Article 39. Hence, several provisions regulate the same matters relating to trading through electronic systems. In the implementation of e-commerce, there are several principles that must be considered by the operation of electronic agents, which is caution, supervision and security of technology systems, control of transaction activities and efficiency and cost effectiveness. (Atikah, 2019).

There are several factors that become obstacles related to consumer protection, which is: consumers cancel their intentions in prosecuting business actors who commit fraud or default on the basis of relatively small transaction values, lack of consumer knowledge so that they think that the demands to be made against business actors are meaningless, lack of understanding of consumer rights, the perception that prosecution against business actors will take a long time at high costs, there is consumer distrust of the law enforcement process (Bidari, 2020).

Legal protection in online commerce (e-commerce) is a shared responsibility, which is the government and society, good coordination and communication and supervision is a control function in avoiding consumer disputes. The principle of prudence and good faith must be upheld; transparency of information and a clear identity must be an absolute requirement for conducting online transactions. Therefore, it is essential for the Government to immediately reformulate the norms that underlie Government Regulation no. 80 of 2019 concerning Trade through Electronic Systems to realize legal certainty for the parties. Based on this, in resolving e-commerce transaction disputes if it is associated with law enforcement objectives, which is realizing a sense of justice, legal certainty, and legal usefulness and associated with simple, fast, and low-cost judicial principles, it is essential to establish legal norms through reformulation of PMSE regulation.

Conclusion

The resolution of consumer disputes in the UUPK has not been able to settle on e-commerce transactions; this is because the definition of business actors in the UUPK has not been able to reach e-commerce business actors, there is no scope of implementation provisions that can be regulated in PMSE, in addition to the BPSK decision that is filed for objection is a confusing matter and does not create legal certainty as is the goal of the law itself. Therefore, the agreement of the parties must be viewed as a higher value. This is

binding on the parties; even though there are advantages and disadvantages to resolving disputes through litigation or non-litigation, both must be considered final and binding to create legal certainty. Based on this, the absence of legal certainty in the community has resulted in inconsistencies in regulations making consumer protection less effective.

Resolution of consumer disputes on e-commerce transactions after the enactment of PMSE to achieve legal certainty, benefit, and justice is felt to be less effective; this is felt because the bureaucracy is too convoluted, the role of BPSK institutions should be optimized as an alternative to dispute resolution outside the court, evaluation of BPSK performance can be applied through the establishment of norms for consumer protection. Based on this, the e-commerce transaction dispute settlement mechanism as stated in PMSE, which states that complaints can be submitted through the Minister are deemed ineffective and do not provide legal certainty for consumers and for business actors considering the existence of several similar regulations that have existed previously regulating the role of BPSK as an authorized body receive reports and complaints related to consumer disputes. Whereas with the enactment of PMSE has added an alternative complaint mechanism, which is through the Minister, e-commerce transaction dispute resolution, and legal force against the BPSK decision, which is actually considered convoluted, inefficient, and does not provide legal certainty.

Suggestion

To achieve legal certainty, simplification of the law, legal unity, and the realization of a fast, simple, and low-cost dispute resolution, it is necessary to establish legal norms through the reformulation of Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems related to the settlement of trade disputes through electronic systems, especially regarding complaints through the Minister, therefore the importance of optimizing the role of BPSK in resolving consumer disputes.

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