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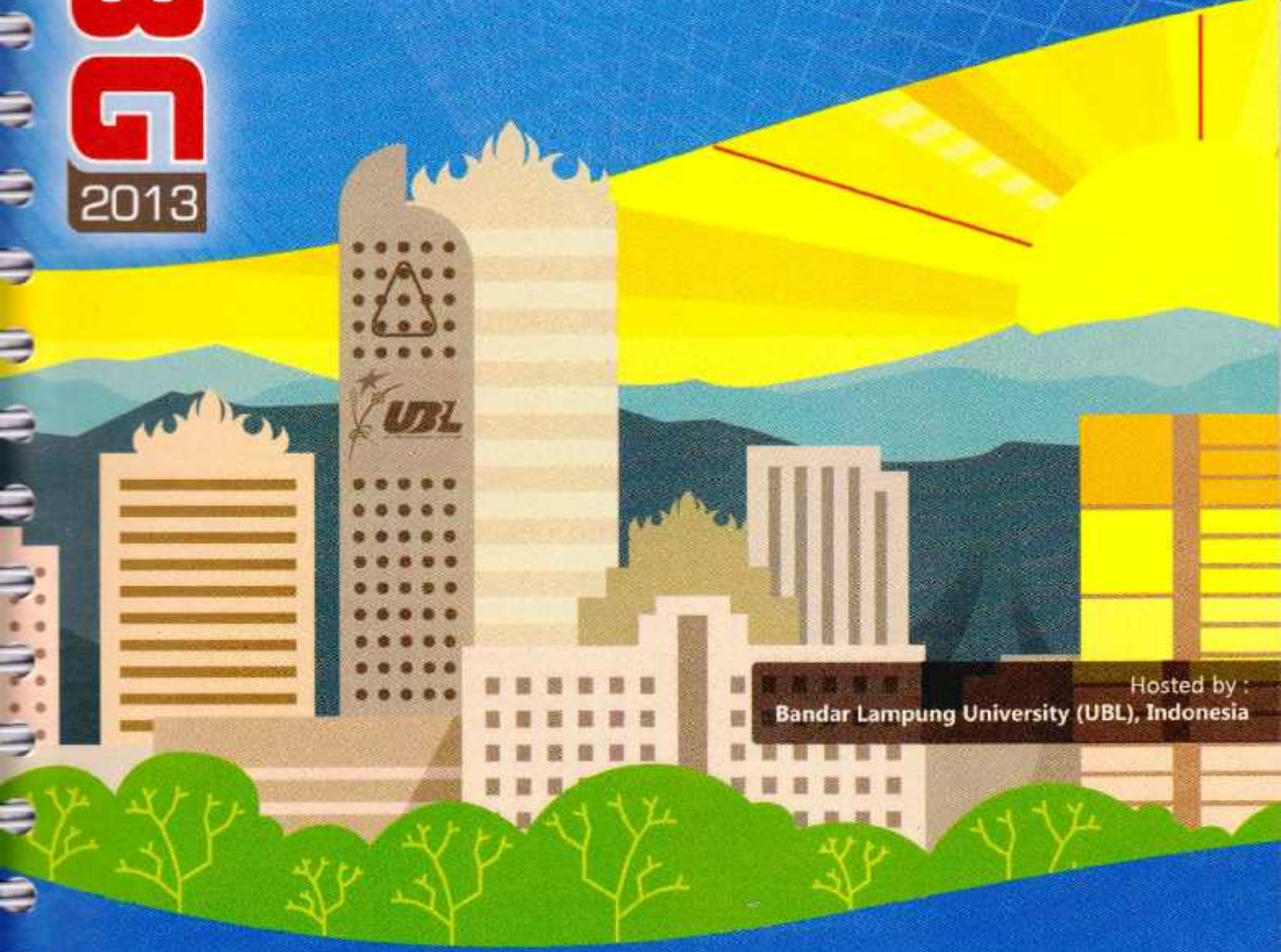
THE FIRST
INTERNATIONAL CONFERENCE ON
**LAW, BUSINESS
& GOVERNANCE**

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
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THE FIRST INTERNATIONAL CONFERENCE
ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013
Bandar Lampung University (UBL)
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Bandar Lampung University (UBL)
Jl. Zainal Abidin Pagar Alam No.89 Labuhan Ratu, Bandar Lampung, Indonesia
Phone: +62 721 36 666 25, Fax: +62 721 701 467
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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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LIMITATIONS OF LEGAL ABILITY IN DISPUTE RESOLUTION OF CONSUMER PROTECTION

Tami Rusli

Faculty of Law, Bandar Lampung University, Lampung, Indonesia

Abstract

Consumer Dispute Settlement Board which is expected to be able to provide a fair settlement to the disputed parties turns out in practice causing confusion for those involved in the implementation process especially when there is an inclusion of the judiciary role in investigating the case of BPSK rejection decision. The problem in this paper is how the limited ability of UUPK law in the consumer disputes resolution is. Based on the result of the study on consumer protection dispute resolution as the end point of the embodiment of justice, it turns out that the law (legislation) in relation to consumer protection has limited capabilities so it cannot realize the purpose of the law. The setting of BPSK contained in UUPK and its implementing regulations there are limitations associated with the setting position of the judiciary, the final setting and binding decision so that BPSK in legislation is ambiguous to be called judicial / arbitration because each has its drawbacks .

Keywords: Ability Limitations of Law, Dispute Resolution, Consumer Protection.

1. BACKGROUND

Efforts to realize the relationship between businesses and consumers need to be improved in a form of a consumer protection organization, so that the government needs to put consumer protection in a product of law. This is important because only the law has the power to force (the law has sanctions).

The existence of legislation on consumer protection does not only have consequences for the Government's obligation to protect consumers, but also it requires to make the development of the national economy, grows and develops the business world so that it can produce a variety of goods and/or services that improves the well-being of society.¹ Various problems encountered the business world is not certainly just in need of a legal instrument that is able to regulate in accordance with the objectives of the law, but also in need of institutions for dispute settlement that is expected to provide protection for the parties in dispute. This is the background of the emergence of the Consumer Dispute Settlement Body.

Consumer Dispute Settlement Body (hereinafter abbreviated as BPSK) is expected to be able to provide a fair settlement to the parties in dispute based on the existing legal provisions. However, in the implementation it turns out an inequality and causes confusion for the parties involved in the implementation process, especially when there is an inclusion of the judiciary role in investigating the case of BPSK rejection decision.

It must be admitted that UUPK governing BPSK, in addition to less special attention to the examination phase in BPSK as the first institutions that deal with violations of consumer rights, also ignores the provisions relating to the role of the judiciary when the setting of relationship between BPSK with the role of the judiciary must be clearly defined because it will have implications in the implementation.

Some ability limitations of the law against BPSK arrangements contained in both UUPK and its implementing regulations can be identified as follows:

- a. The absence of technical guidelines and adequate explanation,
- b. Inconsistency and disharmony in settings,
- c. Different concepts and views on BPSK.
- d. Although BPSK is used in the terminology of arbitration, UUPK does not set the arbitration mechanism

Various limitations of the law ability governing consumer protection dispute resolution cause a legal goal is not achieved and certainly it needs to be redrafted in order to achieve the law's purpose namely justice, expediency, and certainty.

Framework of regulation rearrangements of consumer dispute resolution is an urgent matter in the context of national law development. By a good law setting it is expected that the parties in dispute in particular and the society in general feel the legal protection as people's rights are set out in the constitution. This is what will be studied in this paper with the hope that it is useful for the development of theory and information in order to establish the laws formulation and the consumer protection policy in the future.

2. PROBLEM FORMULATION

Based on the background of the problems that has been raised, the problem can be formulated as follows: How is the limitation of UUPK law ability in the resolution of consumer disputes?

3. DISCUSSION

1. Limitations of Law Ability in Dispute Resolution

The study of the legal regulation of consumer dispute resolution as provided in Act No. 8 of 1999 on consumer protection and associated with other related legislation found that there are some legal limitations and inconsistencies disharmonies of settings, such as BPSK is not constructed as a judicial body so that it has no legal certainty, so that BPSK decision is not final. Some limitations of the law ability are worded as follows:

a. Inconsistency and disharmony Law Settings in the Settlement of Consumer Dispute

Achievement of law objectives as stated by Gustav Radbruch happens when justice, expediency, and certainty can be achieved in a condition of all three sub- systems of law exist as stated by Friedman, legal norms should be in sync with each other both between chapters with the principle and between chapters itself in a legislation as well as between the legislation with another legislation. In fact, the provisions relating to the settlement of consumer disputes are contradictory, overlapping, and inconsistent with each other.

In the settings of UUPK there are inconsistencies between one to another article. This inconsistency can be seen from the provisions of article 1 paragraph (11) to article 46 paragraph (2). Both chapters are in the contrary to the principle of "equality before the law" related to consumer lawsuits.

Based on article 54 paragraph (3) and article 56 paragraph (2), this will cause problems of legal certainty. Thus enabling the submission of objections to BPSK decision will weaken the motivation of any party to resolve their disputes out of court.

Article 56 paragraph (1) which sets the enforcement period of 7 (seven) days, shorter than the period for filing objections as referred to in paragraph (2) that is 14 (fourteen) days, is a mistake. This is because businesses may not carry out the decision when they are not deemed to accept the decision legally because the period to file an objection, which is 14 days, has not yet expired.

Article 54 paragraph (3) and article 57, in practice the difficulties arise to request fiat execution by the District Court because the verdict of BPSK does not load Irah - Irah "For Justice Based on one God", so it might not be in the execution, and yet there are rules / instructions on the procedures for applying the execution of BPSK decision. In addition to inconsistencies between articles in UUPK there is also a disharmony with other legislation.

Article 45 paragraph (2) UUPK with article 1 paragraph 1 of act no. 30/1999, UUPK uses the terminology of arbitration while UUPK does not set up an arbitration mechanism as specified in act no. 30/1999. Due to article 1 paragraph 1 of act no. 30/1999 both parties have been bound to the arbitration agreement, so it is not possible to re-assessed by the district court.

Article 56 paragraph (2) UUPK with (HIR). In HIR it does not set/know about an objection. Objection terminology is not a legal remedies known in the legal system that exists, so it will cause problems in the courts because the courts do not have the special registers of complaints.

Article 57 of UUPK with article 4 paragraph (1) of act no. 4/2004 Junto act no. 48/2009, UUPK does not list Irah - Irah For Justice based on one Almighty deity". The inclusion of these Irah - Irah gives the executorial strength to the decision so that the removal of Irah - Irah results in the decision to be null and void.

Based on the above description, it can be seen that the arrangement in UUPK is also linked/related with other legislation, but if it is reviewed in the form of horizontal harmonization, UUPK is also in the contrary to the laws and regulations related to these. Such legislation emerges ambiguities of norm as a result of careless use of language, so that it gives different interpretations and ultimately leads to conflicts of law. Whereas ideally any related regulations should be formulated with the language and terms used consistently, so that the regulations although have objectives and strategies to achieve different goals, but in the end they can achieve the same goal, namely certainty, fairness and expediency at each regulation. Disharmony of legislation related to consumer protection does not only against fellow provisions in the same statute, but also to the various provisions of laws and other regulations, such as the use of the term for filing an objection, terminology of arbitration. Therefore UUPK is needed in consistency and harmonization efforts between the first article with another article in UUPK as well as between articles in in another legislation, so that there is no opposed interpretation in each interested party.

Based on the functions of consistency and harmonization of law at the behest of law as the goal to be achieved in the setting of UUPK, it should be as a direction to do the consistency and harmonization, so that UUPK aims which is to create consumer protection and grow the national economy could be achieved.

b. The Certainty of BPSK as the Judiciary

Dispute resolution to defend consumer rights is set forth in article 45 paragraph (2) in the first part which states that UUPK determines that the dispute resolution can be done through the court and out of court based on the choice of the parties in dispute.¹ The further setting on consumer dispute resolution outside the court is set in article 49 paragraph 1 of UUPK which states that the government sets up the Consumer Dispute Settlement Body in the level II regions for the settlement of consumer dispute out of court.¹ The follow-up of the provisions of UUPK is then formed BPSK by Kepmenperindag No. 350/MPP/12/2001 about the duties and the authority of BPSK.

c. The Decision of BPSK is Final dan Binding

The BPSK existence which is expected to be part of distributive justice especially for consumers who feel aggrieved by the business, as BPSK decision is final and binding, so it does not need to be brought to court. However, in experience a variety of obstacles exists in its implementation.

The weak point of this BPSK institution is that BPSK verdict is still possible for an objection to be submitted to the district court by the party who is not satisfied though basically BPSK decision is final and binding.

The provisions of article 54 paragraph (3) of UUPK and article 42 paragraph (1) Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 clearly states that BPSK verdict is final and binding and no longer be possible to file an appeal, but in article 56 paragraph (2) of UUPK, there is still an opportunity to file "objections" to the district court, after hte decision of BPSK is notified.¹ It is a matter of legal certainty. The emergence of the possibility of filing an objection against BPSK decision will weaken the motivation of any party to sit in the negotiations to resolve their disputes out of court.

In line with the provisions to have the possibility for an appeal of BPSK decision to the District Court, then if it has not yet received the decision, the district court can file an appeal to the Supreme Court. Both are the same "to annul the final and binding nature" of the BPSK rule⁴. This shows that there is a contradiction between articles in UUPK, so that it can be said that the verdict of BPSK is no use. Given the opportunity to file an objection and appeal will add long turnaround time of consumer and business disputes, won't it? A goal of the non-litigation settlement is to reduce the accumulation of cases and speed up the completion of the case, known as the principle of procedural justice that is simple, inexpensive, and fast.⁵

At present there is a disparity in judgment against a consumer dispute which is basically a case of objection effort to BPSK decision, and there is no unity of opinion and the consistency of any court decisions. This is due to UUPK that does not regulate or provide technical guidance to what is meant by "objection effort".

UUPK has not confirmed in a limitative way the scope of the objections against the decision of BPSK. Noting the current judicial practice, the implementation of legal instruments of objection is very confusing and leads to different perceptions and interpretations, especially for judges and the judiciary itself causing various interpretations of the meaning and the intent of a law.

This is due to objection terminology that is not recognized in the system of the existing legal event. Are objection efforts must be filed in the event of a lawsuit, resistance, or petition and whether or not

BPSK is directly sued so that their testimonies are able to be heard? In the court itself it will cause problems because the objection will be registered on some register because the court has no special registers of complaints.

It must be admitted that this UUPK prejudices to the provisions related with the judiciary. The role setting of the judiciary is not clearly regulated, but the regulation has important legal implications.

Then the question arises whether the effort objections referred to Article 56 paragraph (2) UUPK conjunction with Article 41 paragraph (3) Kepmenperindag No. 350/MPP/Kep/12/2001 can be interpreted as a new action or a resistance.

Although the use of the term “objection” is unusual in procedural law, if it is associated with the provision that the district court accepts the objection, it shall give its decision within a period of 21 days, thus effort objections raised by those who reject the decision of BPSK have to be interpreted as an appeal.

An appeal is an attempt granted by legislation to take the case to a higher court for retrial requested for the first instance court.⁶

When the parties have chosen the dispute resolution is done by BPSK through arbitration, then legally the decision BPSK should be regarded as a decision of an arbitration body. Hence, the objection against the decision of BPSK should be reviewed and considered in the context of an objection to the decision of an arbitration institution, so the application of the law should pay attention to the provisions of the Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution out of court.

If the parties have selected a consumer dispute resolution through BPSK in an arbitration way, then it is an agreement to exclude the court's discretion in resolving disputes that arise, and are fully in absolute terms of BPSK authority.

If objection efforts as referred to Article 56 paragraph (2) UUPK is analogly interpreted as an appeal then all provisions related to the implementation of the appeal refer to the provisions of the procedural law in general court, particularly the civil law.

If the setting of the final and binding decision of BPSK is countered by the general court that is in line with the theory of law objective as what Gustav Radbruch said, the decision of BPSK is meaningless so that it will cause an uncertainty, unnecessary and unjust. A law that is uncertain is a useless law and the uncertain law certainly would cause injustice. This shows that the law governing the settlement of consumer disputes through BPSK has limited capabilities.

4. CONCLUSION

Based on the results of the study on consumer protection dispute resolution as the end point of the embodiment of justice, it turns out that the law (legislation) in relation to the protection of consumers has an ability limitation so that it cannot realize the objectives of the law/is not consistent and harmonious. The arrangement of the Consumer Dispute Settlement Board contained in UUPK and its implementing regulations has the setting limitations related to the position of the judiciary, the setting of the final and binding decision that makes BPSK ambiguous to be called judicial / arbitration in legislation because each has its drawbacks. As a suggestion the government in this case the House of Representatives should immediately renew the UUPK and Regulations Implementation specifically related to the duties and powers of the Consumer Dispute Settlement Body. It should be disseminated to consumers the role of BPSK in resolving disputes. Consumer dispute resolution is temporarily resolved through civil court.

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Jl. Z.A. Pagar Alam No.26 Labuhan Ratu
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