

# *Consumer Protection Based on Justice in Order to Advance State Administration Systems in Indonesia*

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**Abstract-** This study aims to examine how legal protection for consumers in Indonesia, and its effect on a better state administration system, focuses on state institutions in the field of consumer dispute resolution namely BPSK (Badan Penyelesaian Sengketa Konsumen) and in private institutions engaged in consumer dispute resolution in Indonesia, namely YLKI (Yayasan Lembaga Konsumen Indonesia), the extent to which the role of the government develops these institutions and why it is now no longer well supported by the government, from this fact the researchers try to apply it through the concept justice based law. The research method is carried out by doctrinal and non-doctrinal approaches, because the law is not only in concepts as a whole of principles and rules, but also includes institutions and processes that realize the enactment of rules in society. The results of the first study, concept of equity-based consumer protection is how to realize the rights and obligations carried out between the legal relationship of consumers and suppliers of goods or services that are balanced and must realize the concept of equality before the law. The achievement of the concept of equality before the law in consumer protection will automatically launch administrative performance of the government and increase public compliance with the law and the government itself.

**Keywords:** *Legal Protection, Consumer, Justice*

## I. INTRODUCTION

Rapid economic development has produced various types and variations of each type of goods and / or services that can be consumed and utilized. The very interesting thing about business activities that occur in people's lives today is the number of problems which later in its development can lead to a case or dispute that must be resolved by the parties who are in trouble. In fact, in the current settlement process, it can be resolved by judicial channels and outside the court. Various transactions in the above business activities can cause other events, in the form of problems between the parties. For example, a party that is obliged to deliver goods or provide services does not do or if it does not comply with the time, or also the goods or services are defective, not in accordance with the quality, quantity and others, qualifications as agreed upon should or should be expected of the type of goods / services [1].

The enactment of Law Number 8 of 1999 concerning Consumer Protection does not directly guarantee the realization of consumer protection, because in the implementation on the ground the application of several articles of this Law requires the establishment of

institutional support, including the Consumer Dispute Settlement Agency (BPSK) which domiciled in the Regency Capital or City Region which functions to handle and resolve disputes between consumers and business actors outside the court through the way of Conciliation, Mediation and Arbitration.

The Consumer Protection Act does not specifically explain the meaning of consumer disputes. Consumer dispute formulation can be seen in Article 1 number 8 of the Minister of Industry and Trade Decree Number 350 / MPP / Kep / 12/2001 concerning the implementation of tasks and authority of BPSK, which states that consumer disputes are: "disputes between business actors and consumers who demand compensation for damage, pollution and / or who suffer losses due to consuming goods and / or utilizing services. "

Community legal culture includes factors that influence the importance of resolving business disputes outside the court through mediation. Traditional culture that emphasizes community, kinship, harmony, *primus inter pares*, has encouraged the settlement of disputes outside the formal court. Thus a culture that emphasizes efficiency and effectiveness is as strong as encouraging the resolution of business disputes without going through a court [2].

The law that regulates consumer protection is not intended to turn off the business of business people. The consumer protection law can actually encourage a healthy business climate and encourage the birth of companies that are resilient in facing existing competition by providing quality goods / services [3]. In the general explanation of the consumer protection law, it is stated that in its implementation, it will still pay attention to the rights and interests of small and medium-sized businesses. Institutions for handling and resolving consumer disputes are institutions that settle cases relating to consumer disputes outside the court process. Taking the concept of alternative dispute resolution (ADR), because it is expensive and complicated to sue through the judicial process not to mention the expensive costs and length of time spent in the judicial process, the BPSK which in this case represents the government and YLKI representing the private sector can be a solution to overcome all that so that in the future people who litigate in the field of disputes consumers can more easily complete the case.

The judicial process is often the result is not balanced with the costs that have been incurred, not to mention consumers have to struggle to go through complicated, long and tiring judicial processes, in such circumstances the role of BPSK and YLKI is very much needed to help consumers solve consumer dispute problems quickly, simple and inexpensive. The Consumer Dispute Settlement Agency is the body responsible for handling and resolving disputes between business actors and consumers. The Consumer Dispute Settlement Agency (BPSK) is a special institution established and regulated in the Consumer Protection Act, whose main task is to resolve disputes or disputes between consumers and business actors [4]. The Consumer Dispute Settlement Agency (BPSK) is a body under the Ministry of Industry and Trade which is tasked with resolving disputes between business actors and consumers [5].

There are quite a number of dispute resolution institutions that have emerged outside BPSK, whose duties are also to accommodate complaints of various types of complaints from consumers who feel harmed by business actors. For example, the Indonesian Consumers Foundation (YLKI), the presence of these institutions carries out the functions of consumer dispute resolution and indeed this has become a necessity in a global economic system that is increasingly dominated by corporations / capital companies. The strong currents of liberalization and neo-liberalism that affect the global economic system with free market slogans that seem fair and neutral but are in fact designed as a way of mastering the strong against the weak. In consumer disputes the presence of BPSK formed by the government should be able to be part of efforts to protect weak consumers when disputing with stronger business actors, especially when the strong business actors manifest themselves as large companies that are national or international.

BPSK which is claimed to be the adoption of the Small Claims Tribunal model, in its concept has the potential to become a preferred consumer dispute resolution option. These potentials include BPSK bridging the ADR (Alternative Dispute Resolution) mechanism which is simple and flexible with court mechanisms that have authority, the combination of the three balanced elements between consumers, business people and the government in BPSK is a force in balancing conflict of interest, BPSK functions as quasi court plus (adjudication and non adjudication functions), and based on the juridical concept BPSK is located in each city / district. So at least if properly implemented BPSK has fulfilled the management principles of the dispute resolution institution as previously described, so that BPSK is expected to be able to provide equal distribution of justice and reduce the burden on the court.

BPSK in fact until now has lost its prestige, the community in general is more familiar with the Indonesian Consumers Foundation (YLKI) than BPSK. Constraints that make BPSK not work properly. The government as the founder of BPSK seems to be less

serious in developing BPSK so that it runs optimally, so that the impression that appears both central and regional governments is more busy pursuing and serving investors rather than thinking about public interests including consumer rights. Understanding of Consumers according to UUPK is every person who uses goods and / services available in the community, both for the sake of themselves, family, other people and other living beings and not for trading [6].

Consumer protection is a fairly new thing in the world of legislation in Indonesia. Consumer protection has put consumers in the lowest position in the face of business people. In general, business actors take refuge behind a standard agreement signed by both parties. The absence of alternatives taken by consumers has become an open secret in the world of business industry in Indonesia [7]. The regulation on BPSK is regulated in Law Number 8 of 1999 concerning consumer protection (UUPK) along with implementing regulations that are still subtle and unclear and even some of the substances are contradictory, for example article 56 paragraph 2 of UUPK states that BPSK decisions are final and binding based on article 54 paragraph 3 of the UUPK can be requested for legal action / objection to the district court, meaning that the power of the judicial review of BPSK is still dependent on the supremacy of the court so that it is not final. Whereas in practice the filing of an objection to the BPSK decision in the court applies general civil procedure so that it adds to the length of the consumer dispute resolution process.

The disaster that befell Indonesian consumers is not uncommon. For decades a number of important events concerning consumer safety and security in consuming goods and services have surfaced as national concerns that have not received attention from the legal side for consumers. In fact, currently more than 200 million Indonesians will not be able to abandon the title of "consumers". Abdul Hakim GN expressed his astonishment why the problem of consumer protection that clearly concerns the lives of many people is not getting enough attention [8]. The concept of human rights in a democratic country never discriminates between people and citizens in a sovereign territory, so that every citizen has the right to obtain the same legal treatment in law in accordance with the principle of equality before the law.

## II. RESEARCH METHOD

This research is based on legal research conducted with qualitative doctrinal and non-doctrinal approaches. Because the law is not only conceptualized as the whole principles and rules governing human life in society, but also includes institutions and processes that realize the enactment of those rules in society [9], as an embodiment of the symbolic meanings of social actors, as manifested and listened to in and from the actions and interactions between them [10].

### III. FINDINGS AND DISCUSSION

Justice according to John Rawls is Fairness, which is a condition that can be accepted in general at a certain time about what is right. In constructing his theory Rawls departs from a hypodisertation position where when each individual enters a social contract it has liberty. Rawls emphasized that even though in this theory the term fairness is used, it does not mean that the concept of justice and fairness is the same [11]. One form of justice as fairness is to see that the position of each person in the initial situation when entering into an agreement in the social contract is rational and equally neutral [11]. Thus justice as fairness is also called contract theory [11].

Rawls describes contract theory as fairness as follows: "I then present the main ideas of justice as fairness, a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract". Meaning: the main idea of justice as fairness is a theory of justice that generalizes and brings to a higher abstraction the traditional concept of social contract. Then continued Rawls, "the primary subject of the basic structure of society, or more exactly, the way in the major social institutions distributes fundamental rights and duties and determines the division of advantage from social cooperation". Meaning: that the main point of justice is the basic structure of society, more precisely, how the main institutions of society regulate basic rights and obligations and how to determine the distribution of welfare from a social cooperation. The concrete influence of the basic structure of society is very large in order to determine how justice is.

Rawls suggested that the term formal justice be replaced by the term justice as regularity (justice as regularity), rawls continued that formal justice can increase to substantive justice (material). If formal justice is something that is solely compliant with the legal system, then it is only one aspect of the rule of law, a concept that will support and guarantee the legitimate expectations of the people for justice [11]. Concretely, injustice will be felt by everyone if there is a failure of the judge to follow the law appropriately, including his interpretation when deciding a case [11]. Injustice in this form is even more than if the judge commits corruption or other forms of abuse of authority even when examining a case [11] [12].

Formal justice which is only obedient to the system will be felt further as substantive justice (material) only if the judge consistently follows "the substantive justice of institution" and "the possibilities of their reform" in other words, decisions that follow the living law, namely legitimate expectations which have been set forth in law that live and develop in the community and become jurisprudence so that they become legal sources will increase the qualitative degree of formal justice according to Rawls, then where we find formal justice law and

respecting the legitimate expectations of the people who are already part of the social contract, we will tend to find substantive justice [11].

Justice can be achieved according to Rawls' theory. It must first be understood that what a person can do depends on what has been arranged for him in law. Such an idea is procedural justice, even though it is not possible to have perfect procedural justice, we cannot say something is fair because it has followed all procedures fairly. Therefore implementing pure procedural justice is the need to create and implement an impartial institutional system. it is understood that justice will not be achieved only by following all the procedures honestly but an institutional system is still needed which is supported by political (legal) determination with a fair basic structure.

The importance of procedural justice to be applied fairly, impartially and decisively, in consumer protection will make consumers well protected in the view of John Rawls, so that aspects of equality before the law can be achieved. Failure to apply the established procedure rules fairly and impartially, will not achieve justice and automatically legal protection will not be achieved. Achieving equality before the law in consumer protection will make unresolved cases accumulated by consumer protection agencies or government-formed consumer dispute resolution institutions that will not occur and will automatically facilitate government administrative performance in the field of consumer protection, and increase public trust in the government, thus the loyalty of the people as citizens will grow stronger, thus impacting on their compliance with the law.

### IV. CONCLUSION

The essence of consumer protection is how to create a safe and comfortable condition for consumers as a weaker party compared to business people or providers of goods and services. If when there is a dispute between the parties it is necessary to enforce the rules of procedure accordingly, the law on consumer protection must be upheld fairly and without taking sides of the interests of one party or certain interests, to ensure the principle of equality before the law. It is important to improve the administrative performance of the government in conducive to the industrial and trade climate in Indonesia and to ensure public compliance with the law, which with a fair system implemented will increase the loyalty of the community to the law.

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