



Consumer protection against default of business actors

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ABSTRACT

In this study the authors examined consumer protection against business actor defaults. This is motivated by the reality that occurs in society that there are several business actors who do things that harm consumers. Consumer rights are often ignored by business actors, in other words, business actors have not fulfilled their obligations to consumers properly. Consumers who feel aggrieved by business actors can submit a lawsuit to BPSK, but often consumers cannot accept the judge's decision so they proceed to the appeal level, namely at the District Court. From this background, the authors formulate several problems, namely how are the legal rules regarding consumer dispute resolution and what are the responsibilities of business actors towards consumers. This research is a type of field research that is descriptive in nature. In this study, 2 (two) data sources were used, namely primary data, which was data obtained directly from respondents through field interviews or research locations, and the second was secondary data, namely data obtained or collected through some literature or literature studies. There are 2 (two) data collection methods used in this study, namely observation and interviews. The results of this study indicate that consumer protection at BPSK is in accordance with the provisions of Law number 8 of 1999 concerning consumer protection, while the district court is less objective in resolving consumer disputes.

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1. INTRODUCTION

Consumer protection is an integral part of sound business activities. In healthy business activities there is a balance of legal protection between consumers and producers. The absence of balanced protection causes consumers to be in a weak position. Especially if the product produced by the producer is a limited type of product, the producer can abuse this monopolistic position. This of course will harm consumers.

The losses experienced by consumers can arise as a result of the existence of a legal contractual relationship between producers and consumers, as well as the result of unlawful acts committed by producers. Agreements made between the parties do not always run smoothly in the sense that each party is satisfied, because sometimes the recipient parties do not receive the goods or services in accordance with their expectations. If the buyer, in this case the consumer does not receive the goods or services as agreed, then the producer can be said to have committed a default, so that the consumer suffers a loss.

Default of one of the parties in the agreement is a failure to fulfill the conditions stated in the agreement. This is usually experienced more by parties who are weak/have a high dependence on other parties. Because these requirements are one-sided/more burdensome to the weak party. This is because these requirements have been set forth in a standard agreement. Such agreements are commonly used and play an important role in business law which is generally based on efficiency-oriented values.

In addition to default, losses can also occur outside of the contractual relationship, namely if an unlawful act occurs, which can be in the form of a defect in the goods or services resulting in consumer losses, either due to damage or destruction of the goods themselves, or damage or destruction of goods due to defects in that thing. Apart from being caused by default or unlawful acts, many losses experienced by consumers so far have also been caused by consumers being less critical of the goods offered, so that the losses experienced by consumers are not only financial losses, but can also be detrimental to the health or safety of the consumers' own lives. .

The possibility of consumer losses will increase even more if the goods/services circulating in the community do not use the brand regularly, especially if certain brand falsifications occur which allow a brand to be used on several similar goods, but with different quality, so that between goods -these goods may be detrimental to consumers who are less critical.

Protection of consumer interests is necessary because in general consumers are always on the losing side. Legal protection for consumers itself is carried out based on the principles of consumer protection as stipulated in Article 2 of Law number 8 of 1999 concerning Consumer Protection, which is formulated as follows "Consumer protection is based on benefits, certainty, fairness, balance, security and consumer safety, and legal certainty. These principles are placed as a basis both in formulating laws and regulations as well as in various activities related to consumer protection.

Supervision of the implementation of the obligations of these business actors must be increased, thus consumer rights will be easily fulfilled, because the obligations of business actors are rights for consumers. However, in reality, consumer rights are often ignored by business actors, in other words, business actors have not properly fulfilled their obligations to consumers.

There is always the possibility of deviant behavior from producers-business actors regarding their products that are distributed to consumers. Therefore, consumers must be compensated for losses due to consuming products that are distributed. Based on the above, the authors are interested in researching and elevating it into a scientific work in the form of a thesis with the title: "Consumer Protection Against Business Actors' Defaults.

2. RESEARCH METHOD

The type of research used by the authors is field research, which is research used to clarify the compatibility between theory and practice by using primary data regarding consumer protection against defaults by business actors in the BPSK case study and the Makassar District Court. the necessary data and information relating to the problems and discussion of writing this thesis, the authors conducted research by choosing research locations in Makassar City. Data and information collection will be carried out at the BPSK and the Makassar District Court. approach to the object under study and the subject matter,

The data collection methods used in this study include using methods, Document Studies, namely by studying documents related to the problem that the compiler is carefully interviewing, namely by conducting debriefing orally, in writing and structured using a list of questions that have been prepared beforehand.

In this case, the author conducted interviews with the assembly at BPSK Makassar City, Observation, namely systematic observation and recording of the symptoms that appear on the object of research. This observation method is used to collect data on the implementation of consumer protection against default business actors in the settlement of civil cases at BPSK and the Makassar District Court.

3. RESULTS AND DISCUSSIONS

Research results and discussion

1. Consumer Dispute Settlement Agency (BPSK)

Legally the term BPSK is regulated in Law No. 8 of 1999 concerning Consumer Protection and in the Decree of the Minister of Industry and Trade it states the Dispute Settlement Agency. The next consumer in this decision is called BPSK, which is the body tasked with handling and resolving disputes between Business Actors and Consumers. In the discussion, BPSK is closely related to business actors and consumers. So, consumer law is defined as the overall principles and legal rules governing the relationship and problems between various parties with each other related to consumer goods and or services in social life.

BPSK is a non-structural institution or institution that has a function as an institution/institution that resolves consumer problems outside of court. This institution was also formed by the Government in order to resolve consumer disputes that occur. BPSK is under the auspices of the Ministry of Industry and Trade while its operations are assisted by the local regional government. Proposing the establishment of BPSK in districts/cities to the Government in coordination with the province and facilitating BPSK operations. The principles of BPSK in resolving disputes are: prioritizing deliberation, fast, cheap and fair. The existence of BPSK is expected to be able to provide consultation on consumer protection issues,

Based on the explanation of UUPK article 45 paragraph (2) the settlement of consumer disputes as referred to in this paragraph does not rule out the possibility of an amicable settlement by the parties to the dispute. At every stage efforts are made to use a peaceful settlement by both parties to the dispute. Settlement carried out by both parties to the dispute (business actors and consumers) without going through a court or through the Consumer Dispute Settlement Agency and does not conflict with this Law.

In principle, every consumer who is harmed can sue business actors through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment. If an out-of-court consumer dispute settlement effort has been chosen, then a lawsuit through a court can only be pursued if the said effort is declared unsuccessful by one of the parties or by the disputing parties.

2. Makassar Class IA District Court

Makassar District Court is located at Jalan RA Kartini No. 18/23, Kec. Makassar, South Sulawesi 90111. In carrying out its function as a place to seek justice, the Makassar District Court has 23 judges, consisting of 13 judges in general, 5 (five) ad hoc judges at the Industrial Relations Court, 5 (five) judges Ad Hoc Crime of Corruption (Tipikor), totaling 5 (five) people.

From the data obtained by the authors, in 2014 there were 7660 cases that were being processed, then in 2015 there was an increase of 8053 cases. The number of cases decided in 2014 was 6330 cases out of 7660 cases, while in 2015 there were 7824 cases out of 8053 cases.

At the time the authors conducted the research, it was recorded that 46 cases had been entered and 17 had been resolved in January, and in February, out of the 29 cases that had been entered, 23 cases had been decided.

3. Legal rules regarding Consumer Dispute Resolution

a. Dispute Resolution Through BPSK

Procedures for resolving BPSK disputes are regulated in the UUPK jo Kepmenperindag No.350/MPP/12/2001 concerning the implementation of Duties and Authorities. The settlement process is also arranged very simply and as far as possible a formal atmosphere is avoided. Submitting a lawsuit to BPSK, can be done by himself or his attorney or heir, in writing the BPSK secretariat, the secretariat will provide a receipt, if the application is submitted verbally, the secretariat

will record the request in a form provided specifically and affixed with the date and registration number.

An important note is that the application must be complete, because if not the head of the BPSK will reject the application. Summoning the business actor, a summons is made containing the day, date, time and place of the trial as well as the obligation to provide answers to the settlement of consumer disputes to be submitted at the first trial.

If on the first day the business actor is absent and does not fulfill the summons, the business actor can be summoned again, if he is still not present, the BPSK can ask for the help of investigators to present the business actor. If the business actor is present, the consumer chooses a way of resolving the dispute which must be approved by the business actor, namely conciliation, mediation and arbitration. If what the parties choose is conciliation or mediation, then the chairman of the BPSK will immediately appoint an assembly in accordance with the provisions to be appointed as conciliator or mediator. If arbitration is chosen, then the procedure is for the parties to elect a third arbitrator from BPSK members who come from elements of the government as chairman of the assembly.

The trial is held no later than the 7th working day after receiving the request. This trial stage includes three things, namely a trial by conciliation, mediation or arbitration depending on the method chosen by the disputants. Trial by way of conciliation. Conciliation is the process of resolving disputes between parties by involving a neutral and impartial third party, this party is called a conciliator.

The conciliator only takes actions such as setting the time and place for the parties' meeting, directing the subject of the conversation, carrying messages from one party to another if the message cannot be delivered directly by the parties. This model of dispute resolution refers to a consensus between parties, where neutral parties can play an active or inactive role.

The decision of the BPSK assembly is as far as possible based on deliberation to reach a consensus, but if it has been tried seriously it turns out that the result is not successful in reaching a consensus, then the decision is taken by a majority vote. Mediation and conciliation decisions do not contain administrative sanctions while arbitration is made by a panel decision and signed by the chairman and members of the assembly, the panel's decision in arbitration can contain administrative sanctions. The BPSK decision can contain; settlement, the claim is rejected or the claim is granted. Legal problems arise, with reference to the provisions of article 54 paragraph 3 of the UUPK and article 42 paragraph 1 of the decision of the minister of industry and trade number 350/MPP/Kep/12/2001, the BPSK decision, is final and binding and it is no longer possible to appeal or object.

b. Dispute Settlement Through District Court

According to Article 48 of Law Number 1999 concerning consumer protection, consumer dispute resolution through courts refers to provisions regarding general courts. This means that the procedural law used in the trial and examination procedures is based on the Herzine Inland Regeling (HIR) or Rechtsreglemen Buitengewesten (RBg), both of which basically have no fundamental (principal) differences.

Filing a lawsuit in the civil procedural law in force in Indonesia is known as the judge's principle of waiting or being passive. This means that the initiative for litigation comes from interested parties. Where this is regulated in Article 1865 of the Civil Code, that is, every person who argues that he has a right or in order to confirm his own rights or argue for someone else's rights, pointing to an event, is required to prove the existence of said right or event.

Based on the foregoing, that in a civil trial the parties who feel or receive losses arising from a legal relationship, have the right to file a lawsuit before the trial by providing evidence relating to the problem that occurred. This is different from the provisions contained in the consumer protection Shrimp.

Claims filed by a group of consumers, non-governmental consumer protection organizations or the government as referred to in paragraph (1) letter b, letter c, or letter d shall be submitted to the general court. Further provisions regarding large material losses and/or victims that are not small as referred to in paragraph (1) letter d are regulated by government regulations. Therefore, based on the provisions above, those who can file a lawsuit in the provisions of the Consumer Protection Act are any consumers who are harmed, their heirs, whether in the form of individuals or groups, Non-Governmental Consumer Organizations and the government.

With the consideration that the BPSK Assembly, the business actor, in this case as the Defendant, wants to file an appeal because the business actor feels that the Makassar City BPSK is not authorized to try this case, where the legal relationship between the Plaintiff and the Defendant originates from a Fiducia debt and credit agreement and the settlement must go through the general court.

In this case the business actor as the Objection Petitioner submitted an appeal to the Makassar District Court. Based on the verdict above, the author is of the opinion that legal remedies taken by consumers by submitting complaints to BPSK Makassar City are voluntary choices based on free will to choose the means of settlement as referred to in Article (4) paragraph (2) of the UUPK and in line with the provisions of Article 118 paragraph (4) HIR / Article 142 Rbg. Judex facti in trying and deciding this dispute did not emphasize the principle of an honest and impartial trial and tends to side with the objector. It can be observed from the legal considerations that BPSK Makassar City has no absolute authority to adjudicate this dispute because it is a civil debt dispute and becomes the authority of the District Court. According to the author, the panel of judges has no legal basis if it interprets that the Makassar City BPSK is not authorized to adjudicate debt and credit disputes between the objection respondent/consumer and the objector/business actor. If viewed from the legal aspect, the debt and credit relationship of the parties is also a consumer dispute.

4. Responsibilities of business actors to consumers

a. Continuing/Canceling Agreement

Responsibility according to the Indonesian dictionary is, the state of being obliged to bear everything. So that being responsible according to the general Indonesian dictionary is obliged to bear, bear, bear everything, and bear the consequences. Responsibility is human awareness of behavior or actions that are intentional or unintentional. Responsibility also means acting as an embodiment of awareness of obligations. Responsibility is natural, meaning that it has become a part of human life, that every human being is burdened with responsibility. Responsibility is a characteristic of civilized humans, humans feel responsible because they are aware of the good or bad consequences of their actions,

Hans Kelsen's legal theory A concept related to the concept of legal obligation is the concept of legal responsibility (liability). Someone who is legally responsible for certain actions that he can be subject to a sanction in cases where his actions are contrary to the law. Sanctions are imposed because of his own actions that make the person responsible. Responsibility for the agreement can be in the form of canceling/continuing the agreement and compensation.

The meaning of cancellation here is not cancellation because it does not meet the subjective requirements in the agreement, but because the debtor has defaulted. So, the intended cancellation is cancellation as one of the possibilities that a creditor can sue against a debtor who has defaulted. In addition to being able to file a claim for cancellation, creditors can also file other demands, namely cancellation of the agreement and compensation, compensation only, fulfillment of the agreement or fulfillment of the agreement and compensation. However, it should also be stated here that while there are experts who call the term termination of the agreement for the same purpose as canceling the agreement.

Cancellation conditions are considered to always be included in reciprocal agreements, when one party does not fulfill its obligations. In such case the agreement is not null and void, but the cancellation must be requested to the judge. This request must also be made, even though the terms of cancellation regarding non-fulfillment of obligations are stated in the agreement. If the cancellation conditions are not stated in the agreement, the judge is at liberty to according to the circumstances, at the request of the defendant, to provide a period of time to still fulfill his obligations, which period, but it may not exceed one month.

b. Compensation

In the application of provisions within the private law environment, there is an essential difference between claims for damages based on default and claims for compensation based on unlawful acts. If the claim for compensation is based on default, then the defendant and the plaintiff (producer and consumer) are bound by an agreement first. Thus, a third party (not as a party to the agreement) who is harmed cannot claim compensation for reasons of default.

Compensation obtained due to default is the result of non-fulfillment of the main obligation or side obligation (performance obligation or warranty obligation) in the agreement. In addition to the provisions contained in the agreement made by the parties, compensation provisions originating from complementary law must also receive attention, such as provisions regarding default and hidden defects and other provisions. These conditions complement the terms agreed upon by both parties, and these provisions can only be waived if the parties promise otherwise.

By reviewing article by article in the UUPK, it appears that some of the provisions contained in the law are in accordance with the values of business ethics, although with different editorials, the substance and purpose are the same, namely to protect consumers. This can be seen from the rules regarding the obligation to have good faith in doing business (article 7 letter a), honest (article 7 letter b), honest in measurements or scales (article 8 paragraph (1), letters a, b, c, d, e), selling good quality goods (article 8 paragraph (2, 3, 4)), prohibition on hiding defective goods (article 8) and so on. 19 Good faith in business is the essence of the business itself. Good faith will lead to good relations in business.

4. CONCLUSION

Legal regulations regarding consumer dispute resolution have provided legal protection for consumers through the BPSK and the District Court. BPSK is taken into consideration by the district court judge. However, the BPSK decision was not used as the basis for the judge's consideration. The responsibility for consumers in the event of default can be carried out by continuing/canceling the agreement and compensating for losses incurred as a result of the default.

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