

LEGAL REVIEW OF THE CANCELLATION OF THE CONSUMER DISPUTE RESOLUTION AGENCY'S DECISION DUE TO DEFAULT IN A CREDIT AGREEMENT

(Study of Decision Number 587 K/Pdt.Sus-BPSK/2021)

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ABSTRACT

Consumer disputes occur because consumer rights are violated. Settlement of consumer disputes carried out outside the court can be through a dispute resolution body, or carried out by the parties themselves. The formulation of the problem in this thesis is what is the purpose of establishing the Consumer Dispute Resolution Body, what is the authority of the Consumer Dispute Resolution Body in resolving defaults in credit agreements, what are the legal considerations of the judge in decision Number 587 K/Pdt.Sus-BPSK/2021 which canceled the decision of the Consumer Dispute Resolution Body. This research is of a normative juridical nature that connects it with applicable laws and regulations. The research uses a library research method and the data is analyzed using qualitative analysis or described in sentences. Based on the discussion, it was concluded that the legal considerations of the judge in decision Number 587 K/Pdt.Sus-BPSK/2021 which canceled the decision of the Consumer Dispute Resolution Agency were that the BPSK was not authorized to resolve disputes/cases in the field of civil law or a dispute/case issued based on a default on an agreement that had been agreed upon by the parties in this case between the customer/debtor and the bank whose rights and obligations had been agreed upon in the credit agreement.

1. Introduction

The District Court, as one of the judicial authorities within the general court system, has the duties and authorities as stipulated in Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts (hereinafter referred to as the General Courts Law), which, in Article 50, states that the District Court has the duty and authority to examine, decide, and resolve criminal and civil cases at the first instance.

A contract creates rights and obligations in the realm of property law for the contracting parties. By entering into an agreement, the contracting party



voluntarily binds themselves to surrender something, do something, or refrain from doing something for the benefit and benefit of the party to whom they have promised or committed themselves.

Default can occur either intentionally or unintentionally. A party may accidentally default because they are unable to fulfill the obligation or because they are forced to refrain from performing the obligation. Default that occurs when one party to the agreement performs a performance that does not comply with the agreement is highly susceptible to occurring in contracts. The applicant filed an objection because the BPSK decision had been detrimental to the applicant. In their objection, the applicant stated that the BPSK, according to the law, is not a judicial institution and cannot exceed the authority of a general court, for example by conducting an examination and deciding a dispute that actually falls within the civil realm.

The dispute filed by the debtor with the court due to the creditor's default was a dispute between PT. Bank Mandiri (Persero), Tbk., KCP KIIC Karawang, as the former cassation applicant, and Noviana (consumer/debtor). PT. Bank Mandiri (Persero), Tbk., KCP KIIC Karawang rejected the BPSK decision because the BPSK lacks the authority to resolve disputes or cases within the scope of civil law, particularly disputes arising from agreements or contracts. Consequently, all BPSK decisions filed for cassation were annulled by the Supreme Court of the Republic of Indonesia, and therefore the Karawang BPSK decision should be annulled.

2. Research Method

This research is descriptive and analytical in nature, as it only describes the object of study. It is investigated by describing applicable laws and regulations in relation to legal theories and the practice of implementing these laws.

This research is normative juridical, analyzing the research problem through an approach to legal principles that refer to applicable norms or rules of positive law.

In relation to the research method used, the author conducted this by examining regulations, laws, court decisions, circulars and jurisprudence, legal magazines, legal theories, and the opinions of leading legal scholars, which constitute secondary data. These data are then linked to the annulment of the Consumer Dispute Resolution Agency's decision due to default in a credit agreement, according to Supreme Court Decision No. 587 K/Pdt.Sus-BPSK/2021.

The technique used to obtain this data was library research, which involved reading books, journals, the internet, and expert opinions regarding the



annulment of the Consumer Dispute Resolution Agency's decision due to default in a credit agreement, as per Supreme Court Decision No. 587 K/Pdt.Sus-BPSK/2021.

The data analysis in this study was conducted qualitatively, with the data collected systematically organized and then analyzed qualitatively to achieve clarity on the issues discussed. Qualitative data analysis is a research method that produces descriptive data, namely, what respondents state in writing or verbally, as well as their actual behavior, which is thoroughly examined and studied.

3. Results And Discussion

Results

The enactment of Law Number 8 of 1999 concerning Consumer Protection established a special institution to resolve consumer disputes outside of court, the Consumer Protection and Disputes Supervisory Agency (BPSK). This was further regulated through Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of BPSK Duties and Authorities.

Law Number 8 of 1999 concerning Consumer Protection also stipulates the establishment of BPSKs in every Regency or City Government throughout Indonesia. The BPSK is an independent institution tasked with resolving consumer disputes outside of court and overseeing the inclusion of standard clauses.

The duties and authorities of the BPSK are regulated in Article 52 of Law Number 8 of 1999 concerning Consumer Protection and are further elaborated in Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of BPSK Duties and Authorities, which also regulates the procedural law for resolving consumer disputes at the BPSK.

The purpose of establishing the Consumer Protection and Consumer Protection Supervisory Agency (BPSK) is to facilitate, expedite, and provide legal certainty for consumers in pursuing their civil rights against unscrupulous businesses. Furthermore, it can provide access to information and guarantee equal legal protection for both consumers and businesses.

The consumer dispute resolution referred to in Article 45 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection does not include the possibility of amicable settlement between the disputing parties. At every stage of the dispute resolution process, efforts are always made to resolve the dispute amicably between the two disputing parties.



Amicable settlement is a settlement undertaken by both disputing parties (business actors and consumers) without going through the courts or the BPSK and does not conflict with Law Number 8 of 1999 concerning Consumer Protection.

Based on Article 52 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection in conjunction with Article 41 paragraph (3) of the Decree of the Minister of Trade Number 350/MPP/Kep/12/2001 stipulates that parties may file an objection with the District Court no later than 14 (fourteen) working days after receiving notification of the BPSK decision. The District Court is required to issue a decision (verdict) no later than 21 (twenty-one) days after receiving the objection. Regarding the District Court's decision, the parties may file an appeal to the Supreme Court within 14 (fourteen) days, and the Supreme Court is required to issue a decision (verdict) no later than 30 (thirty) days after.

With the legal remedies of appeal and subsequent cassation, the legislators actually appear to be acting inconsistently. The explanation of Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection is inconsistent with the formulations of Article 58 of the Consumer Protection Law. In response to legal issues regarding BPSK decisions, through the Supreme Court with the aim of aligning perceptions across all judicial institutions, Supreme Court Regulation Number 1 of 2006 concerning Procedures for Submitting Objections to BPSK was issued.

4. Discussion

BPSK decisions are final and binding and cannot be appealed unless certain conditions stipulated in Supreme Court Regulation Number 1 of 2006 are met. Based on Supreme Court Regulation Number 1 of 2006 concerning Procedures for Filing Objections to BPSK Decisions, legal remedies for objections filed by consumers or business actors can only be pursued against arbitration decisions issued by the BPSK, excluding BPSK decisions arising from conciliation and mediation.

When linked to the provisions of Article 41 paragraph (3) of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of the Duties and Authorities of the BPSK, it can be seen that the term "final" (BPSK decision) only refers to an appeal, but does not include an appeal to the District Court. The Consumer Protection Law and Ministerial Decree 350/MPP/Kep/12/2001 still provide an opportunity for cassation to the Supreme Court. This final remedy differs from the last resort recognized in the



Arbitration and Alternative Dispute Resolution Law, as the latter is an appeal to the Supreme Court.

The opportunity to file an objection to a BPSK decision with the court is essentially the same as an appeal. Both are final and binding, as is the arbitration decision issued by the BPSK. If the arbitration decision by the BPSK is truly final and binding, the maximum time limit for resolving consumer disputes outside the courts is only 21 (twenty-one) days.

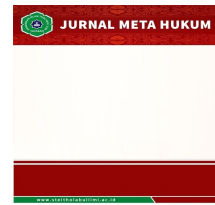
The final and binding power of the BPSK decision does not fully guarantee legal protection for consumers. As is known, the regulations related to the BPSK in the Consumer Protection Law and Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of the Duties and Authorities of the BPSK, along with other implementing regulations, are very limited, unclear, and even contradictory in some substance.

Due to the weaknesses in the position and authority granted by Law Number 8 of 1999 concerning Consumer Protection to the BPSK, particularly regarding its final and binding decisions, two legal remedies can be pursued: objections and cassation.

Although the BPSK arbitration decision uses the terminology of arbitration, Law Number 8 of 1999 concerning Consumer Protection does not regulate the arbitration mechanism as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Instead, it establishes a separate regulation that differs significantly from that stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. This creates a conflict between the arbitration in the BPSK decision and the arbitration decision in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, which requires further interpretation.

With the implementation of the regulation, another problem arises, namely the regulation of the Decree of the Minister of Trade No. 350/MPP/Kep/12/2001, which states that the BPSK may request an enforcement order from the District Court of the injured consumer for a BPSK decision. This type of regulation is unusual in civil procedural law, as the request for an enforcement order is in the interests of the party prevailing in the decision, and therefore the interested party, not the BPSK, should file the enforcement order.

Article 54 paragraph 3 of Law Number 8 of 1999 concerning Consumer Protection, in conjunction with Article 42 paragraph (1) of the Minister of Trade Decree Number 350/MPP/Kep/12/2001, stipulates that the BPSK Panel's decision is final and binding. The explanation of Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection emphasizes that the term



"final" means that there is no appeal or cassation. However, Law Number 8 of 1999 concerning Consumer Protection recognizes the submission of objections to the district court.

Implementation of credit agreements does not always go as expected. Problems arise when debtors are unable to fulfill their obligations as agreed by both parties. For problematic loans, a rescue process is usually first attempted through credit restructuring. If credit restructuring is unsuccessful, it is not uncommon for the problem loan to become a credit dispute, which is often resolved through the courts.

Defaults under credit agreements often lead to banking disputes, namely, banking issues between banks and customers who experience losses in financial transactions. Many transactional issues arise between banks and customers, including fundraising, fund disbursement, payment systems, and product partnerships. When such problems arise, banking disputes arise between customers and banks, leading the aggrieved party to report the banking transaction dispute to a bank dispute resolution agency.

Parties who feel they have been harmed in a banking dispute will resort to court or out-of-court remedies to resolve the banking dispute and obtain justice. If proceeding through the courts, the disputing parties must first file a lawsuit with the court, meeting the administrative requirements stipulated by the court. The lawsuit is registered, and the judge has the authority to render a final decision. If proceeding outside the courts, the disputing parties can go to the Indonesian Alternative Banking Dispute Resolution Agency (LAPSI).

The Consumer Protection and Dispute Resolution Agency (BPSK) is a consumer justice institution primarily tasked with resolving consumer disputes outside of the general court system. This gives the BPSK the authority to examine the accuracy of reports and statements from the disputing parties, review or request payment slips, bills or receipts, laboratory test results, or other evidence.

The BPSK is not authorized to resolve civil law disputes or disputes arising from a breach of an agreement, in this case between a customer/debtor and a bank, whose rights and obligations are stipulated in the agreement.

Based on the Kerawang District Court Decision Number 4/Pdt.Sus-BPSK/2021/PN Kwg, the objection petitioner and the objection respondent had entered into a credit agreement, and the Consumer Dispute Resolution Agency (BPSK) lacks the authority to adjudicate cases arising from the credit agreement. Disputes arising from the credit agreement must be resolved by the District Court, and the Consumer Dispute Resolution Agency (BPSK) lacks the authority to adjudicate such disputes. Therefore, the objection filed by the objection respondent regarding the Consumer Dispute Resolution Agency's authority to



adjudicate disputes must be rejected. Consumer Dispute Resolution, addressed to the Chairman of the Consumer Dispute Resolution Agency (BPSK), whose actions against Indonesian Banking are mentioned in point 3, point a. Essentially, if an agreement contains a clause explicitly stating that disputes will be resolved in the District Court, the BPSK only has the authority to resolve disputes under the agreement if the parties to the agreement rescind the clause. Once the clause regarding settlement through the District Court is rescinded, settlement through the BPSK must be based on the voluntary choice of the disputing parties.

Defaults in credit agreements can lead to banking disputes, namely banking issues between banks and customers who experience losses in financial transactions. Many transactional issues arise between banks and customers, including fundraising, fund disbursement, payment systems, and collaborative products. If such problems arise, banking disputes will arise between customers and banks, leading the aggrieved party to report the banking transaction dispute to the banking dispute resolution agency.

5. conclusion

The purpose of establishing the Consumer Dispute Resolution Agency (BPSK) is to simplify, expedite, and provide legal certainty for consumers to assert their civil rights against unscrupulous businesses. Furthermore, it can provide access to information and guarantee equal legal protection for both consumers and businesses. The Consumer Dispute Resolution Agency (BPSK) is the body tasked with handling and resolving disputes between businesses and consumers. The Consumer Dispute Resolution Agency (BPSK) is a special institution established and regulated by the Consumer Protection Law, whose primary duty is to resolve disputes or disagreements between consumers and businesses.

The Consumer Dispute Resolution Agency's authority to resolve defaults in credit agreements is not within the BPSK's purview, as resolving bad credit disputes is not regulated within the BPSK's duties and authorities. The BPSK exceeded its authority in resolving bad credit disputes due to a misinterpretation of Article 52 of the Consumer Protection Law.

The judge's legal consideration in decision Number 587 K/Pdt.Sus-BPSK/2021 which annulled the decision of the Consumer Dispute Resolution Agency was that BPSK was not authorized to resolve disputes/cases in the field of civil law or a dispute/case that arose based on a breach of contract that had been agreed upon by the parties in this case between the customer/debtor and the bank whose rights and obligations had been agreed upon in the credit agreement.





References

- Agus Yudha Hernoko, *Hukum Perjanjian Azas Proporsionalitas Dalam Kontrak Komersial*, Laksbang Mediatama, Yogyakarta, 2014.
- Ahmadi Miru, *Prinsip-Prinsip Bagi Perlindungan Hukum Konsumen di Indonesia*, Raja Grafindo, Jakarta, 2011.
- Ahmad Yani dan Gunawan Wijaya, *Seri Hukum Bisnis, Jaminan Fidusia*, Jakarta, Radja Grafindo Perkasa, 2016.
- A.Z. Nasution, *Hukum Perindungan Konsumen Suatu Pengantar*. Daya Widya, Jakarta, 2018.
- Bambang Sunggono, *Metodologi Penelitian Hukum*, Rajawali Pers, Jakarta, 2018.
- Gunawan Widjaja dan Ahmad Yani, *Hukum Tentang Perlindungan Konsumen*, Gramedia Pustaka Utama, Jakarta, 2013.
- Happy Susanto, *Hak-Hak Konsumen Jika Dirugikan*, Transmedia Pustaka, Jakarta, 2008.
- Akhyaruddin, A., Marzuki, M., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA PENCUCIAN UANG DARI HASIL TINDAK PIDANA NARKOTIKA (Studi Putusan Mahkamah Agung RI Nomor 250 K/Pid.Sus/2018). *Jurnal Meta Hukum*, 2(2), 27-38. <https://doi.org/10.47652/jmh.v2i2.420>
- Akhyar, A., Danialsyah, D., & Bukhari, B. (2023). ANALISIS YURIDIS TINDAK PIDANA PEMBUNUHAN DISERTAI PEMERKOSAAN (Analisis Putusan Nomor 271/Pid.B/2019/PN Mrb). *Jurnal Meta Hukum*, 2(2), 39-50. <https://doi.org/10.47652/jmh.v2i2.421>
- Simalango, D. ., Marzuki, M., & Mukidi, M. (2023). PERTANGGUNGJAWABAN PIDANA OLEH KURATOR ATAS TINDAKANNYA YANG MERUGIKAN BUNDEL PAILIT (Studi Kasus Putusan Pengadilan Negeri Jakarta Pusat Nomor 2081/Pid.B/2011/PN.Jkt.Pst). *Jurnal Meta Hukum*, 2(2), 51-62. <https://doi.org/10.47652/jmh.v2i2.422>
- Sianipar, E. P. U. ., Lubis, M. Y. ., & Akhyar, A. . (2023). ANALISIS YURIDIS PERTANGGUNGJAWABAN PIDANA PERMUFAKATAN JAHAT (SAMENSPANNING) DALAM KEJAHATAN NARKOTIKA YANG DILAKUKAN OLEH ANAK (Studi Putusan Nomor 57/Pid.Sus-Anak/2022/PN Lbp). *Jurnal Meta Hukum*, 2(2), 63-76. <https://doi.org/10.47652/jmh.v2i2.423>
- Marzuki, M., Faisal, F., & Akhyar, A. . (2023). PENEGAKAN HUKUM TERHADAP TINDAK PIDANA PEMALSUAN SURAT PERSETUJUAN BERLAYAR

(Studi Putusan Nomor 249/Pid.B/2021/PN Ktp). *Jurnal Meta Hukum*, 2(2), 77-88. <https://doi.org/10.47652/jmh.v2i2.424>

Mustamam, M., Bachri, H. ., & Mukidi, M. (2023). IMPLEMENTASI UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA MELALUI FUNGSI ASESMEN DALAM UPAYA PENYELESAIAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Di Kepolisian Sektor Aceh Selatan). *Jurnal Meta Hukum*, 2(2), 89-104. <https://doi.org/10.47652/jmh.v2i2.425>

Gulo, I. E. ., Mukidi, M., & Mustamam, M. (2023). ANALISIS YURIDIS PENERAPAN DIVERSI DALAM PERADILAN PIDANA ANAK ATAS TINDAK KEJAHATAN PIDANA PENGANIAYAAN DI INDONESIA (Studi Kasus Pengadilan Negeri Gunung Sitoli). *Jurnal Meta Hukum*, 2(2), 105-115. <https://doi.org/10.47652/jmh.v2i2.426>

Affan, I., Jonizar, J., & Mukidi, M. (2023). ANALISIS YURIDIS TINDAK PIDANA MENGGUNAKAN SURAT PALSU DALAM PELEPASAN HAK PENGUASAAN DENGAN GANTI RUGI DALAM JUAL BELI TANAH (Studi Putusan Nomor 1722/Pid.B/2021/PN Lbp). *Jurnal Meta Hukum*, 2(2), 116-128. <https://doi.org/10.47652/jmh.v2i2.427>

Triyunda, R. ., Mustamam, M., & Danialsyah, D. (2023). PERTANGGUNGJAWABAN PIDANA AHLI WARIS YANG MENJADIKAN HARTA WARISAN SEBAGAI JAMINAN KREDIT TANPA PERSETUJUAN AHLI WARIS (Studi Putusan Pengadilan Negeri Metro Nomor 121/Pid.B/2021/PN. Met). *Jurnal Meta Hukum*, 2(2), 142-154. <https://doi.org/10.47652/jmh.v2i2.429>

Montana, V. ., Lubis, M. Y. ., & Affan, I. . (2023). PENEGAKAN HUKUM TERHADAP PRAJURIT TNI YANG MELAKUKAN TINDAK PIDANA PENYALAHGUNAAN NARKOTIKA (Studi Putusan Pengadilan Militer I-02 Nomor 109-K/PM.I-02/AL/XI/2022). *Jurnal Meta Hukum*, 2(2), 168-181. <https://doi.org/10.47652/jmh.v2i2.431>