

Juridical Review of Alternative Business Dispute Resolution as a Form of Consumer Rights Protection

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ABSTRACT

The settlement of business disputes between consumers and business actors is an increasingly crucial issue along with the increasing complexity of transactions in the digital era and global economy. The purpose of this research is to analyze the role of the Consumer Dispute Resolution Agency (BPSK) in supporting alternative business dispute resolution as an effort to protect consumer rights in Indonesia and analyze the effectiveness of alternative business dispute resolution in protecting consumer rights in Indonesia. The method used in this research is normative juridical research. The results showed that BPSK plays an important role in providing more effective alternative dispute resolution for Indonesian consumers through mediation, conciliation, and arbitration mechanisms that are friendly, fast, and affordable. Through this approach, BPSK supports the protection of consumer rights and encourages fair and responsible business practices among business actors. The effectiveness of alternative business dispute resolution also creates flexible and efficient solutions, addressing consumer justice needs in a cheaper and faster way. Despite some challenges, ADR provides a favorable solution for consumers and businesses in resolving business disputes..

Keywords: Business disputes, Arbitration, Mediation, and Conciliation

Introduction

The resolution of business disputes between consumers and business actors is an increasingly crucial issue along with the increasing complexity of transactions in the digital era and global economy. The resolution of these business disputes has a significant impact on consumer rights that must be protected to prevent injustice and abuse of dominant positions by business actors (Riefa & Saintier, 2020; Diab et al, 2023; Tira, 2023). In the context of Indonesian law, Law No. 8/1999 on Consumer Protection is the main legal basis that protects consumer rights, as well as regulates dispute resolution mechanisms that can be pursued. One important mechanism in consumer protection efforts is alternative business dispute resolution, where arbitration, mediation and conciliation can be utilized as alternative means that are more effective and efficient than litigation (Matnuh, 2021; Jiménez et al, 2022; Situmorang, 2022; Panov et al, 2024). In Law No. 8/1999 on Consumer Protection, consumers have basic rights such as the right to comfort, security, and safety in consuming goods or services; the right to correct, clear, and honest information about the condition of goods/services, and the right to compensation and compensation in the event of a loss (Kiswanto & Harahap, 2024). The protection of consumer rights requires fast and precise legal certainty, because the litigation route is often less effective for consumers who have limited time, cost, and energy (Riefa & Saintier, 2020; Herrine, 2022). On the other hand, alternative dispute resolution serves as a more consumer-friendly

mechanism, especially in business contexts that demand quick resolution to avoid sustained negative impacts on the relationship between consumers and businesses. Resolving business disputes through alternative dispute resolution (ADR) mechanisms such as arbitration, mediation, and conciliation plays an important role in protecting consumer rights in Indonesia. ADR provides a faster, more flexible and efficient method compared to litigation in court (Goyal & Goyal, 2023; Saputra, 2024; Widjaja, 2024). While ADR offers a number of advantages for consumers, there are also some obstacles to its implementation. One of the most common obstacles is consumers' unfamiliarity with their rights and the dispute resolution procedures available. In addition, limited resources at institutions such as the Consumer Dispute Settlement Body (BPSK) can be an obstacle to resolving disputes effectively. Another obstacle is the resistance of businesses to engage in mediation or arbitration processes, especially if they are not fully aware of the long-term benefits of amicable settlement with consumers.

This study aims to analyze the role of the Consumer Dispute Resolution Agency (BPSK) in supporting alternative business dispute resolution as an effort to protect consumer rights in Indonesia, as well as to assess the effectiveness of such dispute resolution in protecting consumer rights. This analysis includes a review of the regulations governing BPSK's authority in accordance with the Consumer Protection Law, as well as an assessment of the success of alternative dispute resolution methods, such as mediation and arbitration, in terms of speed, cost, and satisfaction of the parties involved. Thus, this research is expected to provide an overview of the extent to which alternative dispute resolution mechanisms can be an effective tool in ensuring the protection of consumer rights in Indonesia. The hypothesis in this study consists of several main questions, namely: first, what is the role of the Consumer Dispute Resolution Agency (BPSK) in supporting alternative business dispute resolution as an effort to protect consumer rights in Indonesia; and second, what is the effectiveness of alternative business dispute resolution in protecting consumer rights in Indonesia..

This research can enrich the legal literature in the field of business dispute resolution and consumer protection. With a juridical analysis of alternative dispute resolution, this research can identify and criticize the strengths and weaknesses of related laws in protecting consumer rights. This will provide a stronger basis for the development of a legal theory of consumer protection that is adaptive to the development of disputes in the digital era and global economy. In addition, this research can provide recommendations for BPSK to improve the effectiveness and efficiency of alternative dispute resolution, particularly in arbitration, mediation and conciliation. This is important in creating a consumer-friendly settlement process that is easily accessible and efficient in terms of time and cost. The results of this study can also be used to increase consumer awareness of their rights and effective ways to resolve disputes. This information will empower consumers to be more courageous and confident in filing claims or choosing the appropriate dispute resolution mechanism in the event of a problem with a business actor..

The protection of consumer rights is the main foundation of this research, covering the rights guaranteed by Law No. 8/1999 on Consumer Protection, such as the right to comfort, security, clear information, and the right to compensation in case of loss. The ADR mechanism in this study includes several methods, including:

1. Arbitration is a dispute resolution method in which the parties agree to appoint one or more arbitrators who are tasked with listening to the arguments of both parties and then providing a final and binding decision (Kolopaking, 2021; Winarta, 2022; Wajdi et al, 2023). The arbitration process in consumer disputes is carried out outside the court, but the results of the decision have the same legal force as a court decision. Arbitration as a dispute resolution in which the parties agree to resolve their problems through arbitrators who provide final and binding decisions. In the context of consumer arbitration, the parties can choose arbitrators who have special expertise in related fields. Arbitration allows consumer disputes to be resolved more quickly and cost-effectively than litigation..
2. Mediation is a dispute resolution method that involves a third party, called a mediator, whose task is to help the parties reach an agreement voluntarily (Putra et al, 2024). The mediator does not have the authority to decide the outcome of the dispute, but rather acts as a facilitator who helps both parties find common ground and mutually beneficial solutions. In the context of consumer disputes, mediation is particularly useful because the process is confidential, informal, and prioritizes solutions that are acceptable to both parties without external pressure..
3. Conciliation is a dispute resolution method in which a conciliator acts to bring the two parties together by openly discussing the problem until a mutual agreement is reached (Winarta, 2022; Santoso & Tahir, 2024). The role of the conciliator in conciliation is to provide advice or recommendations to the parties, but the resulting decision is not binding, so the parties have the freedom to accept or reject the advice.

As a form of ADR, these three concepts will be examined from a juridical perspective to see their effectiveness in resolving consumer disputes. The use of arbitration, mediation, and conciliation mechanisms in consumer dispute resolution has advantages in terms of flexibility, speed, and lower costs compared to litigation. In the context of consumer disputes, these three methods can help parties reach an effective solution while maintaining good relations. The decision to choose the most appropriate method will depend on the nature of the dispute and the preferences of the parties.

Legal Protection Theory

Legal protection theory is a concept that explains how the law functions to protect the rights of individuals and society from arbitrary actions, as well as ensuring justice and legal certainty (Lifante-Vidal, 2020). Legal protection can be interpreted as an effort made by the state to protect the rights of individuals and society through legal regulations (Tahzib, 2021). According to Philipus M. Hadjon, legal protection is a guarantee given by the state to legal subjects to exercise their rights and interests, both in preventive and repressive forms (Sihombing, 2023) Satjipto Rahardjo argues that legal protection is the protection of human rights (HAM) that are harmed by others (Abidin et al, 2022; Ismail et al, 2024). This protection aims so that people can enjoy all the rights granted by law. Meanwhile, Philipus M. Hadjon stated that legal protection consists of two forms, namely preventive protection that can prevent disputes by providing opportunities for people to submit opinions before government decisions are taken, and repressive protection that can resolve disputes that have

occurred through legal processes (Simarmata et al, 2024). Some basic principles in the theory of legal protection include: (1) The principle of justice that ensures that all parties get their rights fairly. (2) The principle of balance that provides a balance between the interests of consumers, business actors, and the government. (3) The principle of security and safety which guarantees security and safety for consumers in using goods or services, and (4) The principle of legal certainty which guarantees that every individual will obey the law and obtain justice in the implementation of protection (Lifante-Vidal, 2020) From this description, it can be concluded that legal protection theory emphasizes the importance of the state's role in protecting the rights of individuals and society through fair and effective regulations. Through preventive and repressive approaches, as well as the basic principles underlying it, this theory serves as a foundation for upholding justice and legal certainty in society. Legal protection theory emphasizes the importance of providing guarantees to individuals to protect their rights. In the context of consumer protection, this theory underscores that consumers must be protected from unfair and exploitative business practices.

Legal Certainty Theory

The theory of legal certainty is a very important concept in the legal system, which emphasizes the need for clarity and consistency in the application of law (Sagita & Alfa, 2024; Harijono et al, 2024). Legal certainty can be defined as a condition in which the law is applied clearly, consistently, and predictably (Lifante-Vidal, 2020; Demin, 2020; Shcherbanyuk et al, 2023). This allows individuals and communities to know their rights and obligations as well as the consequences of legal actions taken. Jan Michiel Otto defines legal certainty as the possibility that in a given situation clear, consistent, and easily obtainable rules are available, and consistently applied by government agencies and judges (Kusuma & Adhari, 2021). Gustav Radbruch considered legal certainty as one of the basic values of law that must be maintained for the sake of state security and order (Jan, 2022). He argues that justice and legal certainty must be considered simultaneously. Meanwhile, Hans Kelsen stated that law is a system of norms that provides guidelines for individual behavior in society (Anwar, 2023). Legal certainty is achieved when the norms are applied without doubt. The principles of legal certainty consist of: (1) Clarity of rules. This means that legal rules must be formulated clearly so as not to cause doubt or multiple interpretations. (2) Consistency of application, which means that the law must be applied consistently by all parties, including the authorities and judicial institutions. (4) Accessibility, which means that the rule of law must be easily accessible to the public so that they can understand and comply with the law, and (4) Judicial independence, where judges must be independent in applying the law without influence from outside parties, so that the decisions taken can be trusted (Hamzah, 2023; Susanto, 2024). Legal certainty theory focuses on efforts to ensure that the law is applied clearly and consistently, so that individuals can understand their rights and obligations. In the context of consumer protection, legal certainty provides assurance that consumers can assert their rights in a structured and predictable manner.

Methods Research

The method used in this research is a type of normative juridical research that focuses on secondary data sources (Benuf & Azhar, 2020; Tan, 2021). Normative juridical research is a type of research in the field of law that focuses on analyzing legal norms in laws and regulations, and other legal sources (Purwati, 2020; Tan, 2021). This research aims to analyze and evaluate positive legal principles derived from legislation regarding alternative business dispute resolution as a form of consumer rights protection through arbitration, mediation, and conciliation. The approaches used include statute approach, conceptual approach, and case approach.

Normative juridical research data analysis is generally descriptive-analytical and has the aim of describing and analyzing the applicable law, understanding the theories behind the norms, and providing a critical view of the implementation and suitability of the law in certain situations (Dadek et al, 2023), by collecting legal material, analyzing legal texts, exploring legal concepts, implementing legal norms, and drawing conclusions.

Result and Discussion

Legal protection in alternative business dispute resolution in Indonesia, especially through BPSK, is a significant effort to protect consumer rights (Umar et al, 2023; Rayhan et al, 2023; Saputra, 2024; Rohmannudin et al, 2024). BPSK was established based on Law Number 8 of 1999 concerning Consumer Protection (Irfansyah, 2021), which clearly regulates its duties and authority in handling disputes between consumers and business actors BPSK has a crucial role in supporting alternative business dispute resolution in Indonesia (Rohmannudin et al, 2024), as part of efforts to protect consumer rights. In the context of business dispute resolution, legal certainty provides a guarantee that consumers can assert their rights in a structured and predictable manner (Fassa, 2024; Suwasta et al, 2024). Some elements of legal certainty that are relevant in the context of BPSK can be seen in Table 1.

Table 1. Legal Certainty in the Settlement of Business Disputes through BPSK

Pasal	Keterangan
Article 1 Paragraph 11	Stating that BPSK is a body in charge of handling and resolving disputes between business actors and consumers.
Article 23	If the business refuses or does not fulfill the consumer's demands, the consumer has the right to sue the business to court. This provides an alternative legal avenue for consumers if they are not satisfied with the BPSK decision.
Article 49 Paragraph 1	The government established BPSK in the regions to resolve consumer disputes out of court. This shows that BPSK functions as an alternative institution for dispute resolution, providing easier access for consumers and business actors..
Article 54 Paragraph 3	The government established BPSK in the regions to resolve consumer disputes out of court. This shows that BPSK functions as an alternative institution for dispute resolution, providing easier access for consumers and business actors.
Article 57	BPSK decisions must be registered with the local District Court to obtain executorial force. This

indicates that although the BPSK decision is final, it does not have the power of execution until it is registered, creating potential uncertainty in the implementation of the decision.

As an institution established in Indonesia, BPSK has the main objective of providing alternative consumer dispute resolution services. In the context of consumer rights protection, BPSK plays an important role by providing a dispute resolution mechanism that is simpler, faster, and more affordable than litigation in court. BPSK helps consumers obtain justice and effective solutions through arbitration, mediation, and conciliation processes.

Alternative dispute resolution is regulated in Law Number 30 Year 1999 on Arbitration and Alternative Dispute Resolution. Arbitration, mediation, and conciliation are three ADR methods used as alternatives to litigation in court. Although these three methods both function as alternative dispute resolution, there are fundamental differences between arbitration, mediation, and conciliation. Arbitration results in a final and binding award, while mediation and conciliation emphasize a collaborative process and voluntary agreements reached with the help of a third party. In mediation and conciliation, the parties have more control over the final outcome as the award is non-binding and focuses more on the satisfaction of both parties. While in arbitration, the arbitrator has the authority to make a final award without the need for consent from both parties. The fundamental differences among the three ADR methods can be seen in table 2.

Table 2: Differences in ADR Methods in Business Dispute Resolution

Aspek	Arbitrase	Mediasi	Konsiliasi
Third Party Authority	The arbitrator's award is final and binding	The mediator only facilitates communication without the authority to decide the outcome.	The conciliator provides recommendations or advice, but is not binding.
Nature of Decision	Binding like a court judgment	Non-binding, results based on agreement of the parties	Non-binding, only suggestions or recommendations
Procedure	More formal, court-like	Informal and flexible	Informal and flexible
Third Party Role	The arbitrator acts as a "judge" with full authority.	The mediator is a facilitator without the authority to decide the outcome of the case.	The conciliator makes a recommendation that can be accepted or rejected
Pros	Fast, definitive and binding results	Flexible, maintain good relationship between parties	Gives concrete advice, more peaceful and flexible process

The resolution of business disputes through alternative mechanisms such as arbitration, mediation, and conciliation plays an important role in protecting consumer rights in Indonesia. ADR provides a faster, more flexible and efficient method compared to litigation in court. In the context of business disputes involving consumers, these mechanisms not only offer cost-effective solutions, but also provide a more responsive and friendly outlet for consumers who are often in a weaker position than business actors..

1. Reduced cost and turnaround time

One of the main advantages of ADR is its efficiency in terms of time and cost compared to litigation in court (Harahap, 2024). Court proceedings generally take a long time and involve high costs, such as lawyer fees, evidence collection, and other court fees. This can be a barrier for consumers who often have limited resources. With ADR, consumers can file complaints and resolve disputes at a lower cost and in less time. For example, Indonesia's Consumer Dispute Resolution Agency (BPSK) provides consumers with the opportunity to resolve disputes with businesses through mediation or conciliation in less time.

2. Flexibility in the settlement process

Alternative dispute resolution methods also offer greater flexibility than formal litigation (Syaroni & Widyaningrum, 2024). In ADR, parties are not bound by strict procedures as in litigation, so they can freely choose the time, place, and method of settlement that suits their needs. This flexibility is particularly beneficial for consumers who may need quick solutions to their problems, such as replacement of defective products or compensation for losses caused by service discrepancies. With a more flexible process, ADR allows consumers and businesses to reach a fair and mutually beneficial agreement..

3. Facilitate peaceful resolution and maintain good relations

ADR, particularly mediation and conciliation, emphasizes dialogue and collaboration between consumers and businesses. The process aims to reach an amicable agreement and does not emphasize "who is at fault" but rather "how to reach a solution". In consumer disputes, this amicable process is very beneficial as it allows consumers to express their grievances without feeling judged or pressured, and businesses can also understand consumers' problems from a more open perspective. Thus, ADR not only provides a solution to the problem, but also helps maintain good relations between consumers and businesses.

4. Protection of consumer rights through mediation and conciliation

In business disputes, consumer rights are often vulnerable to neglect due to the imbalance of bargaining power between consumers and businesses. Mediation and conciliation help protect consumer rights by involving a neutral third party called a mediator or conciliator, whose job is to ensure that the process is fair and impartial. The mediator or conciliator also provides guidance to consumers to understand their rights during the settlement process. In Indonesia, BPSK acts as an institution that provides mediation and conciliation services specifically for consumer disputes. With the facilitation of a third party, consumers can feel more protected, and businesses are also motivated to fulfill their obligations fairly.

5. Enforcement of binding arbitration awards in consumer disputes

If the mediation or conciliation process does not reach an agreement, consumers can resort to arbitration as a last resort. Arbitration provides a final award that is binding on the parties, which means that the business actor is obliged to implement the award if found guilty. The arbitration mechanism guarantees that consumers will obtain justice with a binding award, so that their rights can be effectively restored. In addition, since the arbitration award is binding, consumers do not need to spend more time in seeking a settlement.

6. Maintain privacy and confidentiality of disputes

The ADR process also maintains the confidentiality and privacy of the parties involved. In business disputes, consumers may feel more comfortable if their case is not made public for reputational or privacy reasons. Court litigation is open and judgments are often a matter of public record, which can be detrimental to the parties involved, especially businesses. However, in ADR, the parties can agree that all information during the dispute resolution process will remain confidential. This is very beneficial for consumers who want to resolve their problems without having a negative impact on their relationship with the business or their own reputation.

7. Effectiveness in realizing restorative justice

In addition to quick and binding settlements, ADR is also oriented towards a restorative justice approach, which focuses on restoration and solutions rather than punishment. In the context of consumer disputes, this restorative approach gives businesses the opportunity to correct mistakes and fulfill consumer rights. For example, if there is a defective product or inappropriate service, businesses can immediately provide compensation or replacement without having to go through a lengthy legal process. Consumers not only receive their rights, but also get the satisfaction that the business has resolved the problem in a positive way. This approach builds consumer trust and gives businesses the opportunity to improve the quality of their products.

While ADR is highly effective in resolving consumer disputes, there are several challenges that need to be overcome to optimize ADR. One of the main challenges is the low level of consumer awareness about ADR mechanisms and the institutions that offer these services. Many consumers are still unaware that they can file complaints through BPSK or other arbitration institutions. In addition, there are also challenges in terms of accessibility and the limited number of dispute resolution institutions in some regions. On the other hand, the awareness of business actors to accept and comply with ADR decisions, especially those that are non-binding, also remains a problem. Business actors are sometimes reluctant to follow the results of an agreement because it is non-binding, especially in mediation or conciliation. This shows the importance of further education to consumers and business actors about the benefits and obligations in dispute resolution through ADR..

Conclusion

BPSK plays a major role in providing more effective and efficient alternative dispute resolution for consumers in Indonesia. With consumer-friendly mechanisms, ranging from mediation, conciliation, to arbitration, BPSK enables consumers to fight for their rights without having to go through lengthy and expensive court processes. Through its various efforts in providing access, ensuring transparency, maintaining confidentiality, and encouraging amicable settlements, BPSK supports the protection of consumer rights and encourages awareness and compliance of business actors in carrying out fair and responsible business practices.

The effectiveness of alternative business dispute resolution in protecting consumer rights in Indonesia can be an effective and efficient solution to meet the needs of justice for consumers. Through more flexible, inexpensive, fast, and consumer-friendly mechanisms, ADR plays a major role in protecting consumers from

unfair business practices. Although there are some challenges in its implementation, ADR provides a more favorable solution for both consumers and businesses, and is able to create a better balance in business dispute resolution.

To increase the effectiveness of consumer dispute resolution in Indonesia, efforts are needed to increase the capacity of relevant institutions such as BPSK. Increasing consumer awareness of their rights and the procedures that can be taken through continuous education and campaigns is also essential. In addition, legal reforms that strengthen alternative dispute resolution provisions in Law No. 8/1999 on Consumer Protection can provide a stronger basis for consumers to access effective and fair dispute resolution mechanisms. With these various steps, it is hoped that alternative business dispute resolution can become a more optimal means of protecting consumer rights in the future. Thus, alternative business dispute resolution through arbitration, mediation and conciliation mechanisms not only serves as a more efficient way than litigation, but also as a concrete form of consumer rights protection in Indonesia.

Suggestion And Recommendation

The government needs to strengthen alternative consumer dispute resolution institutions such as BPSK through capacity building of human resources and funding. BPSK as a non-litigation institution plays an important role in resolving consumer disputes efficiently without the need to go to court. In addition, government agencies, businesses and consumer protection organizations need to increase collaboration to provide inclusive and responsive dispute resolution services. Thus, dispute resolution can be carried out effectively and still protect consumer rights as a whole.

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