

Dispute Resolution between Business Consumers and Consumers through Arbitration in the Consumer Protection Perspective

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Abstract: The background of the problem is; what is the Process and Ways of Resolving Disputes between Business Actors and Consumers through Arbitration in the Consumer Protection Perspective in Indonesia, What is the Effectiveness of the Implementation of Dispute Resolution through Arbitration in the Consumer Protection Perspective in Indonesia? The method of approach in this study uses the Normative Juridical approach, the specifications of this study are analytical descriptive. Conclusions are; The UUPK Law also regulates dispute resolution through the court and outside the court. One way to resolve disputes is through arbitration and alternative dispute resolution is regulated in Law No. 30 of 1999. There are several ways to resolve disputes, namely Arbitration, Consultation, Negotiation, Conciliation Mediation, Expert Assessment. The length of the settlement process through Arbitration is 180 working days the Verdict is Final and Binding so that legal certainty and a sense of justice obtained by the Parties is more guaranteed in the perspective of Consumer Protection, Effectiveness of Arbitration in the context of Consumer Protection is more effective, efficient, fast and low cost compared to settlement through the Court because it is vulnerable to a long settlement due to the burden of cases that have accumulated, besides those parties who do not agree can make Appeals or Reconsideration Efforts.

1 INTRODUCTION

In the provisions of Article 5 of Law Number 30 Year 1999 it is stated that: "Disputes that can be resolved through arbitration are only disputes in the field of trade and rights which according to the laws and regulations are fully controlled by the parties to the dispute".

Settlement or scope of disputes between business actors and the public, in this case consumers, in addition to litigation or through judicial channels, in laws and regulations can be done by using various methods of settlement, according to Law No. 30 of 1999 concerning Arbitration and Settlement of disputes can be sought in advance through the Alternative Pathways for Dispute Settlement and arbitration, while in the Consumer Protection Act who feel disadvantaged due to the dispute is through the Consumer Dispute Settlement Agency or BPSK.

There are several reasons behind the emergence of interest and attention to ADR (Alternative Dispute Resolution) and arbitration: First, the need to provide dispute resolution mechanisms that are more flexible

and responsive to the needs of the parties to the dispute; Second, to strengthen community involvement in the dispute resolution process; and third, expanding access to achieve or realize justice so that each dispute that has its own characteristics which sometimes does not fit into one form of settlement, will be suitable with another form of settlement, so the parties can choose the best mechanism (Suparto, 2016).

The Consumer Protection Act, explains, among others: taking the Dispute Resolution outside the court by adopting a Solution through Negotiations, Consultations, Reconciliation, Mediation and Expert Assessments. As stated in Article 45 paragraph (2) which reads: "Settlement of consumer disputes can be taken through the court or outside the court based on the voluntary choice of the parties to the dispute". Dispute resolution outside the Court does not rule out the possibility of dispute resolution through Peace by establishing a win-win Solution regarding the form of an agreement regarding the amount of compensation.

Based on the description in the background, the researcher gave the title of this research is "Dispute

Resolution Between Business Consumers And Consumers Through Arbitration In The Consumer Protective Perspective”.

2 METHODS

The method of approach in this study uses the Normative Juridical approach, which is an approach that bases on a review of legal views and uses secondary data or library material as library material as the main material of research (Aminudin, & Asikin, 2004).

The specification of this research is analytical descriptive, namely research that focuses on solving existing problems in the present. This descriptive research is intended to describe all data obtained relating to the research title in a clear and detailed manner which is then analyzed in order to answer the existing problems. Researchers in this study want to obtain a complete and clear picture of dispute resolution between business actors and consumers in the Consumer Protection Perspective.

3 DISCUSSION

3.1 Process and Methods of Settlement of Disputes between Business Actors and Consumers through Arbitration in the Consumer Protection Perspective in Indonesia

Consumer protection is any effort that guarantees legal certainty to provide protection to consumers. (Article 1 number 1 of Law No. 8/1999 concerning Consumer Protection). The legal certainty includes all efforts to empower consumers to obtain or determine their choice of goods or services needs and to maintain or defend their rights if harmed by the behavior of business actors as providers of consumer needs (Nasution, 2014).

Consumer Disputes can be resolved outside the court and through the court. Out-of-court dispute settlement is a solution through an institution tasked with resolving disputes between consumers and business actors, namely the Consumer Dispute Resolution Agency (BPSK) or other Forums to reach an agreement (Sidabalok, 2014).

Law Number 30 Year 1999 Concerning Arbitration and Alternative Dispute Resolution, the forum in question is the Negotiation Forum, Consultation, Conciliation, Mediation and Expert

Assessment and Arbitration, thus opening three forums and ways to resolve consumer disputes, namely:

1. Settlement of consumer disputes through immediate demands through the Forum of Negotiations, Consultations, Conciliations, Expert Assessments and Arbitrations;
2. Settlement of disputes through the Consumer Dispute Resolution Agency or BPSK;
3. Settlement of consumer disputes through the Courts.

The process of Settlement of Consumer disputes through Arbitration can be taken and carried out Settlement of disputes through arbitration which results in a forced decision which is handed down by a third party, namely the arbitrator or the arbitrator's panel. The arbitration award is final and has permanent legal force and is binding on the parties. Arbitration award is final means that the arbitration award is final and therefore cannot be appealed, appealed, or reviewed.

The process of dispute resolution through arbitration is as follows: a) Starting with the registration and submission of an application for arbitration by the parties through and addressed to the BANI secretariat; b) In the case of a dispute to be examined and decided by the arbitral panel, the Petitioner and Respondent must first appoint an arbitrator; c) The BANI Secretariat will study the application for arbitration and the contract for the application of arbitration in which the purpose is whether BANI has the authority to examine and decide on the arbitration application; d) The BANI Secretariat will send a notification letter regarding the amount of costs that must be borne by the parties to conduct an arbitration at BANI; e) After the parties pay the fees, BANI will send a summons for the case examination; f) The arbitral tribunal must first make mediation efforts between the parties for a period of 40 working days but can be extended according to the agreement of the parties; g) If mediation is not reached, the Arbitral Tribunal can directly examine and decide upon the Case which becomes their authority within 180 working days.

While the Process of Settlement of disputes between Business Actors in the world of business and Commerce with consumers or the public using Consultation, Negotiation, Mediation, Conciliation, and Expert judgment referring to Law No.30 of 1999 Concerning arbitration and APS is more Flexible because the nature of APS is to find a Solution or win-win Solution is not deciding who is wrong or right so

that the agreement will benefit the parties, neither party feels defeated in the dispute.

3.2 Effectiveness of the Application of Dispute Resolution through Arbitration in the Consumer Protection Perspective in Indonesia

The patterns of settlement of consumer disputes outside the court desired by the UUPK, are the right choice, because the formulated solution contains a solution that satisfies the disputing party. According to IBR Supancana (2006), among the factors that constitute weaknesses in competitiveness to attract direct investment in a country is the existence of an effective dispute resolution mechanism which is one of the factors taken into account before deciding to undertake investment activities.

The effective dispute resolution mechanism involves: a) Dispute resolution forums, whether through national courts, national and international arbitration bodies, or other alternative dispute resolution forums; b) Effectiveness of the validity of the law applied in the dispute; c) Fast decision making process and reasonable cost; d) The neutrality and professionalism of judges, arbitrators or third parties involved in the decision making process; e) The effectiveness of the implementation or implementation of court decisions, arbitration bodies and other dispute resolution bodies; f) Compliance of the parties to the decisions made.

The parties to the dispute can choose other ways in resolving the dispute they face, if the litigation path makes their dispute takes a long time, namely by Settling through a non-litigation route or Alternative Dispute Resolution as set out in Law Number 30 of 1999 Arbitration and Alternative Dispute Resolution (hereinafter abbreviated as Arbitration Law and APS). Alternative Dispute Resolution (hereinafter abbreviated as APS) is a dispute resolution process carried out outside the court (Nurhayati, 2009).

The effectiveness of the application of arbitration over the court can at least be seen in terms of: First, the Parties to the dispute can choose their own arbitrators. Second, the implementation of the arbitral tribunal guarantees unwanted secrecy and publicity. Third, the Final and Binding Arbitration Award. Fourth, fast and cheap. Fifth, the parties can determine the choice of law, as well as the process or arbitration held. Sixth, Arbitration procedures are more informal than court procedures. Seventh, the Arbitrator is also not obliged to follow the arbitrator's previous decision. Eighth, the arbitration decision has

the power of the Executorial through the District Court.

4 CONCLUSION

The UUPK Law also regulates dispute resolution through the court and outside the court. One way to resolve disputes is through arbitration and alternative dispute resolution is regulated in Law No. 30 of 1999. There are several ways to resolve disputes, namely Arbitration, Consultation, Negotiation, Conciliation Mediation, and Expert Assessment. The length of the settlement process through Arbitration is 180 working days, the Verdict is Final and Binding, so that legal certainty and a sense of justice obtained by the Parties are more secure in the Consumer Protection perspective.

Effectiveness of the implementation of arbitration in the context of Consumer Protection is more effective, efficient, fast and low cost compared to settlement through the Court because it is vulnerable to a long settlement time due to a burdensome case load, besides that the parties who disagree can make an Appeal, Cassation or Review Effort Back.

The Suggestions in this article is: a) There is a need for legal certainty that when the parties in choosing a dispute resolution between the business actors of the community or consumers through Arbitration or BPSK, the results of the decision can not be tested in other Judicial institutions; b) For Settlement through Arbitration or Consumer Dispute Settlement Agency (BPSK) the results of the Decision issued through the dispute settlement agency can be done by the Executorial itself not through the Court.

REFERENCES

- Aminudin, & Asikin, Z., 2004. *Pengantar Metode Penelitian Hukum*. Jakarta: RadjaGrafindo Persada.
- Nasution, BJ. (2014). Upaya Penerapan Sanksi Administratif dan Perizinan sebagai Pembatasan terhadap Kebebasan Bertindak. *Asy-Syir'ah Jurnal Ilmu Syari'ah dan Hukum*, 48, 211-230. DOI: 10.14421/asyisyir'ah.2014.%25x.
- Nurhayati, I. (2009). Efektivitas Pengawasan Badan Pengawas Obat dan Makanan terhadap Peredaran Produk Pangan Olahan Impor dalam Mewujudkan Perlindungan Konsumen. *Mimbar Hukum*, 21, 203-222. DOI: 10.22146/jmh.16265.
- Sidabalok, J., 2014. *Hukum Perlindungan konsumen*, Bandung: Citra Aditya Bakti.

- Suparto, S. (2016). Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia. *Jurnal Mimbar Hukum*, 28, 427-438. DOI: 10.22146/jmh.16674.
- Suprananca, IBR., 2006. *Kerangka Hukum dan Kebijakan Investasi Langsung di Indonesia*, Bogor: Ghalia Indonesia.

