

Research Article

# Optimization of Consumer Dispute Resolution Tasks by the Consumer Dispute Resolution Agency of Makassar City

Abd Haris Hamid\* , Mustawa Nur , Ruslan Mustari 

Faculty of Law, Bosowa University, South Sulawesi, Indonesia

## Abstract

consumer dispute resolution by the Consumer Dispute Resolution Agency (BPSK) of Makassar City which is carried out through mediation or conciliation or arbitration, has not been running optimally due to various obstacles, namely the constraint of legal substance, namely the BPSK Decision is Final and Binding, but can still be objected to in court, the consumer protection law was born in the era of centralized government, while reform demands the need for a government based on regional autonomy, as a result the consumer protection law, especially that related to the existence of BPSK as stated in Article 49 paragraph (1), has become weak due to the creation of Law Number 23 of 2014 concerning Regional Government, there is no Standard Operating Procedure regarding the implementation of BPSK duties and authorities, there is no regulation regarding the procedure for executing BPSK decisions. Technical operational obstacles, namely office facilities do not support and the operational budget is very limited, even for certain things it is not available.

## Keywords

Consumer Dispute Resolution, Consumer Dispute Resolution Body, Mediation

## 1. Introduction

The Consumer Dispute Resolution Agency (BPSK) as referred to in Law Number 8 of 1999 (UUPK) is an agency tasked with handling and resolving disputes between business actors and consumers. Although the BPSK institution exists as a dispute resolution agency, this agency is not part of the judicial authority institution. The government established BPSK in the second-level regions to resolve consumer disputes outside the courts (non-litigation). The basic concept of establishing the BPSK institution is to handle dispute resolution between consumers and business actors which generally involve small amounts of value. The following will present two main points, namely the definition of consumers and the definition of business actors with the intention of providing an

initial overview of the importance of the relationship between the two.

According to Philip Kotler, a consumer is an individual who can also be interpreted as a household who aims to buy and obtain goods or services that are consumed personally [18].

Insentius Samsul stated that consumers are users or end users of a product, either as buyers, or obtained through other means, such as gifts, gifts and invitation [3].

In the Consumer Protection Act and the Regulation of the Minister of Trade Number 72 of 2020 concerning the Consumer Dispute Resolution Agency. The definition of consumers has been regulated. Article 1 Number 2 of the Con-

\*Corresponding author: [abd.haris@universitasbosowa.ac.id](mailto:abd.haris@universitasbosowa.ac.id) (Abd Haris Hamid)

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sumer Protection Act stipulates that a consumer is any person who uses goods and/or services available in the community, either for the benefit of themselves, their families, other people, or other living things and not for trading. Likewise, Article 1 Number 1 of the Minister of Trade Regulation. Number 72 of 2020 also states the definition of consumers with the same formulation.

If we look closely at the definition of consumers as stipulated above, then basically what is meant by consumers is the end user of goods and/or services produced by business actors (end user/ultimate consumer) [9]. This definition is of course different from the definition of consumers that is widely found in various literatures, especially economic literature that consumers are anyone who buys goods and/or services without being limited by the purpose of the purchase, so that it can include intermediate consumers [15].

Likewise, the definition of Business Actors as per Article 1 Number 3 of UUPK and Article 1 Number 3 of Permendag. Number 72 of 2020 stipulates that business actors are every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia. Either alone or together through an agreement to organize business activities in various economic fields.

Regarding the legal understanding of business actors as mentioned above, it is stated that business actors do not have to be legal entities, but can also be individual [17]. Likewise, Ahmadi Miru stated that the definition of business actors as per Article 1 number 3 of the Consumer Protection Act is a very broad definition because it covers all forms of business, so it will make it easier for consumers, in the sense that many parties can be sued, but it would be even better if the Consumer Protection Act provided details as in the directive, so that consumers can more easily determine to whom they will file a lawsuit if they are harmed due to the use of the product [11].

Further said that because the term business actor referred to in UUPK covers various forms/types of businesses, it is better to determine the order in which consumers should sue when they are harmed by business actors. The order should be arranged as follows [12]:

1. The first to be sued is the business actor who makes the product if he is domiciled in the country and his domicile is known to the consumer who is harmed;
2. If the product that is detrimental to consumers is produced abroad, then the one who is sued is the importer, because the Consumer Protection Act does not cover business actors abroad; and
3. If the manufacturer or importer of a product is unknown, then the person who is sued is the seller from whom the consumer purchased the goods.

The above sequences, of course, only apply if a product is defective during production, because it is possible that the goods are defective during production, because it is possible that the goods are defective when they are beyond the control

or beyond the fault of the manufacturer who produces the product.

In line with Ahmadi Miru, NHT Siahaan said that the definition of business actors given by UUPK is very broad, because business actors are not only limited to company owners registered as legal entities, but also small company owners, such as shop owners, workshop owners, even stall owners, can be classified as business actors [5].

It is undeniable that the relationship between consumers and business actors is a relationship that occurs continuously between the two, this happens because both need each other or are interdependent (interdependent) with each other. Consumers need business actors in an effort to fulfill all their needs that they cannot produce themselves, while business actors need consumers in an effort to support the continuity of their business activities in producing both goods and services to gain profit.

The relationship between consumers and business actors in an effort to mutually fulfill their needs, is not free from consumer losses due to consuming goods and/or services produced or sold by business actors [1]. For these losses, whether they like it or not, whether they want to or not, of course the injured party in this case the consumer will definitely ask for or demand compensation from the business actor. Efforts that can be made by consumers to obtain compensation are through the process of filing a consumer dispute, either through the BPSK or through the general court where the consumer is domiciled [6].

Consumer disputes are disputes concerning violations of consumer rights. Its scope includes all aspects of law, both civil, criminal and constitutional [10].

In simple terms, what is meant by consumer disputes according to Sularsi is a dispute or disagreement that occurs between consumers as the injured party and business actors as the party that produces, sells or provides goods or services that are consumed or utilized by consumers [12].

According to Az. Nasution, consumer disputes are disputes between consumers and business actors (public or private) regarding certain consumer products, goods and/or consumer services. Furthermore, Az. Nasution explained that it is necessary to understand that not all disputes involving consumers and business actors can be called consumer disputes, so to determine whether a dispute is a consumer dispute or not, it is necessary to pay attention to the following: 1. The consumer in dispute is a consumer as defined by the Consumer Protection Act. 2. The business actor is a business actor as defined in the Consumer Protection Act. 3. The disputed product is a consumer product, namely a product of goods and/or services that are generally used, utilized or utilized by consumers to meet the interests of themselves, their families and/or their household [8].

Although the UUPK does not explicitly mention the definition of consumer disputes, however, in Permendag Number 72 of 2020, especially Article 1 number 4, it is determined that consumer disputes are disputes between Business Actors and

Consumers who demand compensation for damage, pollution, and/or suffering losses due to consuming goods and/ or utilizing services produced or used.

Before Law Number 8 of 1999 concerning Consumer Protection (UUPK) was created, lawsuits for violations by business actors against consumer rights could be filed by consumers or their heirs to the district court based on a lawsuit for breach of contract or unlawful act (*onrechtmatige daad*). The court is the only institution for resolving legal disputes. However, after the reform and in line with the demands of consumer activists who have long expected a special legal instrument that provides protection to consumers, the UUPK was created and stipulated, which of course has substantively changed the process of enforcing consumer protection law by establishing an institution for resolving

Consumer disputes outside the courts. Article 1 Number 11 of the UUPK stipulates that the Consumer Dispute Resolution Agency (BPSK) is an agency tasked with handling and resolving small-scale and simple consumer dispute cases [20]. The legal basis for the establishment of BPSK is Article 49 Paragraph (1) of the UUPK that the government establishes a consumer dispute resolution agency in the Level II Region to resolve consumer disputes outside the courts. In line with that, for the first time BPSK was formed in 10 (ten) major cities in Indonesia through Presidential Decree Number 90 of 2001 concerning the establishment of the Consumer Dispute Resolution Agency in the Medan City Government, Palembang City, Central Jakarta City, West Jakarta City, Bandung City, Semarang City, Yogyakarta City, Surabaya City, Malang City and Makassar City. And several years later, BPSK was formed in several major cities in Indonesia [7]

The purpose of establishing BPSK is as a way out to avoid resolving consumer disputes through general courts. This is done because litigation in general courts takes a long time and costs a lot of money, while resolving consumer disputes requires fast, simple and inexpensive procedural law [2]. That is why, through UUPK, especially Article 54 Paragraph (3) that the panel's decision is final and binding, it is intended to realize fast, simple and inexpensive procedural law, because the essence of a final decision is a decision that can no longer be appealed and cassation, likewise the nature of a binding decision means that the decision already has binding legal force (*inkracht van gewijsde*) or already has the power of execution [14], this is in line with the "*res judicata pro veritate habetur* principle" which states that a decision that is no longer possible to take legal action, is declared a decision that has definite legal force [13].

Based on this principle, the BPSK decision must be viewed as a decision that has definite legal force. Although in the end the provisions of this article seem to contradict the provisions of Article 56 Paragraph (2) of the UUPK which states that the parties may file an objection to the district court no later than 14 (fourteen) working days after receiving notification of the decision. In addition, the BPSK does not have the power to execute its own decision, because the BPSK institution is

designed only as a quasi-judicial institution and is not like other countries that place their consumer dispute resolution institutions as Small Claims Courts (SCC) or Small Claims Tribunals (SCT) [19].

The procedures for resolving consumer disputes by BPSK are regulated in the Decree of the Minister of Trade Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Agency (BPSK) which has been amended by the Regulation of the Minister of Trade Number 06/M-DAG/PER/2/2017 concerning the Consumer Dispute Resolution Agency as amended by the Regulation of the Minister of Trade Number 72 of 2020 concerning the Consumer Dispute Resolution Agency, the resolution process is also regulated very simply and as far as possible a formal atmosphere is avoided.

Article 54 paragraph (1) of the Consumer Protection Act stipulates that in order to handle and resolve consumer disputes, the consumer settlement body forms a panel. Paragraph (2) stipulates that the number of panel members as referred to in paragraph (1) must be odd and at least 3 (three) people representing all elements as referred to in Article 49 paragraph (3), and assisted by a clerk. Meanwhile, paragraph (3) stipulates that the panel's decision is final and binding.

Based on the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, there are 3 (three) ways to resolve disputes through the Consumer Dispute Resolution Agency (BPSK), namely:

## 2. Conciliation

Article 1 number 9 of the Decree of the Minister of Trade explains that conciliation is a process of resolving consumer disputes outside the courts through the intermediary of the BPSK to bring together the disputing parties, and the resolution is left to the parties. Settlement in this way is carried out by the disputing parties themselves, assisted by the BPSK panel which acts passively as a conciliator (Article 5 Paragraph (1) of the Decree of the Minister of Trade).

## 3. Mediation

Settlement of disputes by means of mediation based on Article 1 number 10 of the Decree of the Minister of Industry and Trade explains that mediation is a process of resolving consumer disputes outside the court with the intermediary of BPSK as an advisor and the settlement is left to the parties. Settlement in this way is carried out by the disputing parties themselves accompanied by the BPSK assembly which acts actively as a mediator (Article 5 Paragraph (2) of the Decree of the Minister of Industry and Trade. This mediation method is almost the same as the conciliation method, the difference between the two is that mediation is actively accompanied by an assembly, while conciliation is passively accompanied by an assembly.

## 4. Arbitration

In contrast to conciliation and mediation methods, based on Article 1 number 11 of the Decree of the Minister of Trade and Industry, arbitration is a process for resolving consumer disputes outside the courts, in which case the disputing parties fully submit the resolution to the BPSK.

Settlement of consumer disputes through arbitration is different from the two previous methods. In the arbitration method, the body or assembly formed by BPSK is active in reconciling the disputing parties if no agreement is reached between them. Therefore, the method used is for BPSK to provide an explanation to the disputing parties regarding the legislation relating to consumer protection law. Then, each disputing party is given the same opportunity to explain what is being disputed. Later, the decision resulting from the settlement of this dispute is the full authority of the body/ assembly formed by BPSK [16]

### *The problem*

The problems raised in this study are formulated as follows: First, how is the optimization of consumer dispute resolution tasks by BPSK Makassar City in terms of the substance of its regulations according to Law Number 8 of 1999 concerning Consumer Protection and Law Number 23 of 2014 concerning Regional Government? Second, how is the availability of facilities and infrastructure and budget in supporting the effectiveness of the implementation of BPSK's tasks in resolving consumer disputes in Makassar City? Third, how is the availability of Human Resources in BPSK Makassar City, both in terms of quantity and quality?

### *Method*

This study uses a qualitative method with a normative-empirical approach. The data sources used are primary data and secondary data. Then all are analyzed and described descriptively.

The normative approach focuses on the analysis of the application of the provisions of Article 49 Paragraph (1), Article 52 of the Consumer Protection Act. Article 54 Paragraph (3) of the Consumer Protection Act and Article 56 Paragraph (2) of the Consumer Protection Act in conjunction with Law Number 23 of 2014 concerning Regional Government in conjunction with Article 4 Paragraph (1) and Paragraph (2) and Article 9 Paragraph (1) and Paragraph (2) of the Minister of Trade Regulation Number 72 of 2020 concerning the Consumer Dispute Resolution Agency in this case is the Makassar City BPSK. At this stage, the achievement indicators are determined, namely the discrepancy between the substance of the provisions of Article 49, Article 52, Article 54 and Article 56 of the Consumer Protection Act and Law Number 23 of 2014 concerning Regional Government and Article 4, Article 9 of the Minister of Trade Regulation Number 72 of 2020 with the facts in the implementation of the duties of the Makassar City BPSK. To measure/ensure whether the resolution of consumer disputes through the Makassar City BPSK has been running optimally. The em-

pirical approach is used to analyze the strengthening of empowerment of BPSK Makassar City. At this stage, the research achievement indicators are determined, namely the model of strengthening the duties of BPSK Makassar City through adequate budget support, quality human resources and other supporting facilities. The output of the research is the publication of scientific articles through nationally accredited journal.

### *Discussion*

#### *1. The substance of consumer dispute resolution regulations and their implications for optimizing consumer dispute resolution tasks by the Makassar City BPSK.*

The Consumer Dispute Resolution Agency (BPSK) has been regulated in the UUPK. Article 49 Paragraph (1) stipulates that the Government establishes a consumer dispute resolution agency in the Level II Region to resolve consumer disputes outside the courts. Based on these provisions, the presence of BPSK was first inaugurated in 2001 through Presidential Decree Number 90 of 2001 concerning the Establishment of a Consumer Dispute Resolution Agency in 10 (ten) major cities in Indonesia, namely; Medan City, Palembang City, Central Jakarta City, West Jakarta City, Bandung City, Semarang City, Yogyakarta City, Surabaya City, Malang City and Makassar City.

As a follow-up to the issuance of Presidential Decree Number 90 of 2001 as mentioned above, the members of the Makassar City BPSK were appointed through the Decree of the Minister of Industry and Trade of the Republic of Indonesia.

Composition BPSK Makassar City membership is description from Article 49 Paragraph (3) and Paragraph (4) of the UUPK. Paragraph (3) stipulates that BPSK members consist of on element government, elements consumers and elements perpetrator business. And in Paragraph (4) it is determined that member every element as in Paragraph (3) amounts to at least 3 (three) people, and at most 5 (five) people.

For support smoothness implementation task BPSK members, especially in support budget, then based on Presidential Decree Number 90 of 2001 in Article 90 stipulates that cost implementation BPSK's duties are assigned to the Budget State Revenue and Expenditure (APBN) and Budget Regional Income and Expenditure (APBD). Although Article 49 Paragraph (1) of the UUPK stipulates that Government form a settlement body dispute consumers in Level II Regions, but in effort For make it easier consumer For reach BPSK, then in the Presidential Decree said, no listed limitation of BPSK's jurisdiction area, so that consumer can complain the problem is which BPSK he wants.

When examined in a way deep substance from Article 49 Paragraph (1) UUPK, then basically the formation of BPSK in Level II Regions including Makassar show that the formation of UUPK is still in Spirit system government centralistic, therefore Still use approach division of government areas consisting of from Central Government, Level I Provincial Government and



Level II Regency /City Government. That's it. the reason so that initiative formation of BPSK in each Regency and City are The Central Government through the Minister of Industry and Trade, which is now the Ministry Already separated. With Thus, the presence of UUPK with Spirit centralistic it seems experience change paradigm with birth Constitution Number 22 of 1999 concerning Regional Government that has changed with Constitution Number 32 of 2004. Furthermore changed with Constitution Number 23 of 2014.

Constitution the give broad autonomy to area, with authority For organize and manage interests of the local community. As a result government center must deliver affairs organization all related matter with interest area become affairs autonomy in the region [4], including in it is affairs BPSK formation and implementation his duties and authorities.

Before Constitution Number 23 of 2014 was created, then formation of BPSK in each Regency /City still become authority government center, including BPSK Makassar City, because that, in South Sulawesi Province already formed in 12 (twelve) districts / cities. However, with coming into effect in a way effective Constitution Number 23 of 2014, which resulted in handed over affairs budgeting on formation and implementation BPSK's duties are to affairs government area province, then start moment that, one One by one, the BPSKS in 12 (twelve) regencies / cities in South Sulawesi Province became No active. This fact show that although the presence of UUPK as umbrella law (umbrella act), at the same time as support hope for consumer in get treatment fair, to be less than optimal, at the same time as proof that political will government in give protection to consumer still very weak. Because, that needed synchronization between UUPK and Constitution government area as form seriousness government in give protection to consumers.

In general substantive arrangement duties and authorities of BPSK as follows set up in Article 52 UUPK in conjunction with Article 9 Paragraph (2) of the Minister of Trade Regulation Number 72 of 2020 that Duties and authorities of the settlement body dispute consumer includes:

- a) Carrying out handling and resolution of consumer disputes, by means of mediation, arbitration or conciliation;
- b) Providing consumer protection consultation;
- c) Carrying out supervision over the inclusion of standard clauses;
- d) Report to investigator general if happen violation provision in Constitution This;
- e) Accept complaint Good written and also No written, from consumer about the occurrence violation to protection consumers;
- f) Conducting consumer protection research and inspections;
- g) Summoning business actors suspected of violating consumer protection;
- h) Summon and present witnesses, expert witnesses and/or anyone deemed to have knowledge of violations of this law;

- i) Requesting assistance from investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letters g and h, who is unwilling to comply with the summons of the consumer dispute resolution body;
- j) Obtaining, examining and/or assessing letter, document or other evidence for investigation and/or examination;
- k) Deciding and determining whether or not there is a loss on the part of the consumer;
- l) Notify business actors who violate consumer protection of the decision;
- m) Imposing administrative sanctions on business actors who violate the provisions of this law.
- n) If we look closely at the contents of Article 52 of the UUPK in conjunction with Article 9 Paragraph (2) of the Minister of Trade Regulation Number 72 of 2020 above, there are 3 (three) strategic functions of the BPSK, namely:
  - o) BPSK functions as a legal instrument for resolving disputes outside the courts (alternative dispute resolution), namely through conciliation, mediation and arbitration.
  - p) Do supervision to inclusion clause standard (one-sided standard form contract)
  - q) Imposing administrative sanctions on business actors who violate the provisions of the UUPK.

Of the three functions BPSK strategic as mentioned above, then according to Rustan the former member of BPSK Makassar City for 4 periods (Interview, December 3, 2024) that during become members of the Makassar City BPSK, then the most dominant duties and authorities of BPSK implemented is finish dispute consumer Good through method conciliation, mediation and arbitration. As the longest- serving member of the Makassar City BPSK, because Already become BPSK member for 20 years namely since 2002 to 2023 has been handle that's all Lots complaint consumer from year to years. From a number of complaints received by BPSK, then among them there are some that are rejected, because considered No is dispute consumer / not BPSK authority and some big stated fulfil condition for handled and resolved Good through method conciliation, mediation and arbitration. For task other namely do supervision inclusion clause standard on agreement made by the perpetrator effort and drop sanctions administration to perpetrator effort, same very Not yet we have ever done it, because Not yet made provision or instruction implementation about the procedure carry out supervision and methods the fall sanctions administration as per Article 18 and Article 60 of UUPK. Therefore, the implementation of duties and authorities of BPSK in particular settlement dispute with through method conciliation or mediation or arbitration in general Already implemented, even though No can denied that in a way substantive Still there is problem, because BPSK's decision does not everything nature final and binding as set up in Article 54 Paragraph (3) of the UUPK.

That matter happen because in Article 56 Paragraph (2)

UUPK determines that the parties can submit object to district court no later than 14 (fourteen) days work after accepting announcement decision Article 56 Paragraph (2) of the UUPK. make meaning decision final and binding as per Article 54 Paragraph (3) UUPK does not applies at the time of one of the parties no accept or object on decision and generally those who object on the BPSK decision is perpetrator business especially on the verdict arbitration. So that can it is said that the Makassar City BPSK has not yet fully effective carry out his duties and authorities in finish dispute consumer.

In line with Rustan's opinion above, then Darmadi Durianto Member of the Indonesian House of Representatives Commission VI at the time discussion at the Parliament Building complex on Tuesday, March 14, 2023 with Inosentius Samsul Head of the DPR RI Expert Body and Sularsi Head Field Complaint YLKI, said that at least There are 3 (three) points that become point weak from UUPK. *First*, question substance law (*Legal Substance*) as in Article 54 and Article 56 of the UUPK. Article 54 Paragraph (3) states that Decision assembly is final and binding. Meanwhile, Article 56 Paragraph (2) states that the parties can submit object to District Court no later than 14 (four) days twelve) days Work after accept announcement decision said, so that in a way substantive between Article 54 Paragraph (3) and Article 56 Paragraph (2) occurs contradictory or happen the conflict of norms that causes the norm difficult implemented. *Second*, Structure law (*Legal Structure*) and enforcer the law. BPSK becomes "sterile" in matter authority consequence from Constitution Number 23 of 2014 concerning Regional Government. Previously, all consumer disputes were resolved at the BPSK at the Regency/City level. However, after Law Number 23 of 2014 was enacted, all BPSK authority was withdrawn to the Provincial Government. This became a problem when the Province lacked budget and no one was taking care of consumer disputes. In the end, BPSKs almost all over Indonesia closed down. Therefore, the resolution of consumer disputes must still be carried out as mandated by the UUPK. Likewise, in terms of law enforcement, when a consumer dispute is handled by the police, police investigators rarely use the articles in the UUPK, because it is suspected that the police do not know much about how to apply the articles of the UUPK. *Third*, regarding Legal Culture, Indonesian people, in this case consumers, are reluctant to report to the authorities on the grounds that there will be more losses than not reporting consumer disputes. Such conditions make legal protection for consumers very weak.

The same thing was said by Sularsi, Head of Complaints Division of the Indonesian Consumers Foundation (YLKI) that UUPK does have many weaknesses, both in terms of the substance of its regulations and in terms of its enforcement. For that reason, it is appropriate that UUPK be changed.

## 2. Other dominant factors that influence the optimization of consumer dispute resolution by BPSK Makassar City

In the initial discussion, it was stated that one of the factors influencing the less than optimal implementation of the duties and authority of the Makassar City BPSK is the inconsistency in the articles in the UUPK. There are conflicts between one

article and another, for example Article 54 Paragraph (3) and Article 56 Paragraph (2) of the UUPK, as well as horizontal conflicts or contradictions between one product of statutory regulations and another.

The following will discuss other dominant factors that can influence the ineffectiveness of the implementation of the duties and authorities of the Makassar City BPSK in resolving consumer disputes. Based on Presidential Decree Number 90 of 2001 concerning the Establishment of the Consumer Dispute Resolution Agency in the first 10 (ten) major cities in Indonesia. Article 90 stipulates that the cost of implementing BPSK duties is borne by the State Budget (APBN) and the Regional Budget. This provision is an instrument that supports the smooth implementation of BPSK duties, of course including the Makassar City BPSK.

At the beginning of the establishment of BPSK, the operational budget including honorarium for BPSK members and BPSK Clerk members was charged to the State Revenue and Expenditure Budget (APBN). Meanwhile, the need for facilities and infrastructure was charged to the Regional Revenue and Expenditure Budget (APBD) of the Regency/City through the General Allocation Fund. So that in South Sulawesi Province, BPSK institutions have been formed in 12 (twelve) Regencies/Cities.

The distribution of the operational financing budget allocation for BPSK sourced from the APBN and APBD did not last long, due to the enactment of Law Number 23 of 2014 concerning Regional Government. As a result, all operational financing of BPSK's duties and authorities were handed over to the provincial government. On that basis, the Provincial Government has the authority, including; implementing consumer protection, testing the quality of goods, and supervising goods and/or services in circulation throughout the Regency/City. Meanwhile, the Regency/City only has the authority such as implementing legal meteorology in the form of calibration, re-calibration and supervision.

Regarding the authority of the provincial government in the field of consumer protection as mentioned above, it seems that the budget fulfillment is not small. For funding needs in the implementation of BPSK based on the Regulation of the Minister of Trade of the Republic of Indonesia Number 72 of 2020 concerning the Consumer Dispute Resolution Agency. Article 39 Paragraph (1) stipulates that funding for the implementation of BPSK is charged to the provincial revenue and expenditure budget. Meanwhile, paragraph (2) stipulates that funding for the implementation of BPSK as referred to in paragraph (1) consists of: a). facilities and infrastructure; b). operational costs; c). honorarium for the chairman; d). honorarium for the head of the secretariat and members of the secretariat.

The huge budget needed to organize BPSK comes from the provincial government budget as stated in Article 39 of the Minister of Trade Regulation Number 72 of 2020. According to Darmadi Durianto, Member of Commission VI of the Indonesian House of Representatives, BPSK is currently

barren in terms of authority due to Law Number 23 of 2014 concerning Regional Government. Because previously all consumer dispute resolution was carried out by BPSK at the Regency/City level as stated in Article 49 Paragraph (1) of the UUPK. However, through Law Number 23 of 2014 concerning Regional Government, BPSK was then withdrawn to the provincial level. As a result, when the provincial government lacks budget, the victim is BPSK, so it is not surprising that now many BPSKs are closing.

The above view is in line with the opinion of Simpursia as a Young Expert Trade Supervisor at the South Sulawesi Provincial Trade Service, (interview on November 28, 2024) that there is a very fundamental difference related to the existence of BPSK before and after the enactment of Law Number 23 of 2014. BPSK before Law Number 23 of 2014 was enacted, in South Sulawesi Province there were still 12 (twelve) BPSK in the Regency/City Government. However, after Law Number 23 of 2014 concerning Regional Government came into effect, one by one the BPSK that still existed in the Regency/City began to become inactive, because their authority had been withdrawn to the Provincial Government. Even the Makassar City BPSK now has no active members. This happened because of the limited budget of the South Sulawesi Provincial Government as the party given the authority to handle the formation of BPSK as stipulated in Trade Ministerial Regulation Number 72 of 2020 concerning the Consumer Dispute Resolution Agency. Article 4 paragraph (1) stipulates that BPSK is formed based on the Governor's Decree in accordance with the provincial work area. In paragraph (2) it is stipulated that the provincial working area as referred to in paragraph (1) consists of district/city areas.

Simpursia further said that the reduction or even elimination of the budget for the formation and implementation of BPSK duties in South Sulawesi occurred during the *Corona Virus Disease 2019* (COVID-19) pandemic. In an effort to overcome the impact of Covid-19, the President issued Presidential Instruction Number 4 of 2020 concerning *Refocusing* Activities, Budget Relocation, and Procurement of Goods and Services in the Framework of Accelerating the Handling of Covid-19. In the instruction, the President specifically instructed the Minister of Home Affairs to take further steps in order to accelerate the use of the APBD and/or changes to the Regional Head's regulations concerning the Explanation of the APBD for the acceleration of Covid-19. Based on this policy, the Governor of South Sulawesi made budget adjustments to all regional work units including the Trade Service (Dispreindag). As a result, the operational budget for the implementation of BPSK duties that still exist in several regencies/cities has been reduced, in fact, even though the budget was still proposed, it seems that it did not receive approval, resulting in all BPSK offices in several regencies/cities in South Sulawesi no longer operating, including the Makassar City BPSK.

According to Rustan, the elimination of the budget for the operational costs of the Makassar City BPSK, including in

other areas in South Sulawesi Province, is very unfortunate because the existence of the BPSK is still very much needed by consumers, especially consumers who experience losses due to consuming goods and/or services produced by business actors. BPSK is used as one of the mainstays of hope to obtain a sense of justice, especially in efforts to obtain compensation without going through the lawsuit process in the district court. Even the elimination of the budget for the implementation of BPSK's duties is the same as deliberately ignoring the provisions of laws and regulations. Therefore, good intentions or political will are needed from the government, especially the South Sulawesi provincial government to immediately budget the costs of organizing the BPSK, so that the BPSK can be formed again in each district/city in South Sulawesi Province as mandated by Article 49 paragraph (1) UUPK *in conjunction with* Article 39 paragraph (1) and paragraph (2) of the Minister of Trade Regulation. Number 72 of 2020 concerning the Consumer Dispute Resolution Agency.

Regarding the limited facilities and infrastructure, Rustan realized that during his time as a member of the Makassar City BPSK, although the implementation of the BPSK's dispute resolution tasks through mediation, conciliation and arbitration continued, it was very suboptimal. One of the obstacles was the lack of facilities and infrastructure in the form of room facilities and work desks, including a very limited courtroom for the arbitration panel and a clerk's office. His office was still attached to the Makassar City Trade Office.

### Conclusion

Substantively, the regulation on the Consumer Dispute Resolution Agency (BPSK) especially related to the nature of the decision which is final and binding *has* problems because the decision can still be appealed to the court, so that the essence of the final and binding decision becomes meaningless. In addition, the implementation of the duties of the BPSK in Makassar City has not been optimal due to limited budget and infrastructure.

In an effort to optimize the function of the BPSK of Makassar City, it is necessary to immediately amend the Consumer Protection Law (UUPK) and make substantive adjustments between the UUPK and Law Number 23 of 2014 concerning Regional Government.

## Abbreviations

BPSK	Consumer Dispute Protection Agency
APBD	Regional Revenue and Expenditure Budget
APBN	State Revenue and Expenditure Budget
YLKI	Indonesian Consumers Foundation
UUPK	Consumer Protection Law
SCC	Small Claims Courts
SCT	Small Claims Tribunals

## Author Contributions

**Abd Haris Hamid:** Conceptualization, Data curation, Formal Analysis, Methodology, Resources, Supervision, Validation, Visualization, Writing – review & editing

**Mustawa Nur:** Formal Analysis, Funding acquisition, Project administration, Resources, Software, Visualization, Writing – original draft, Writing – review & editing

**Ruslan Mustari:** Conceptualization, Data curation, Funding acquisition, Methodology, Resources, Software, Validation, Visualization, Writing – review & editing

## Conflicts of Interest

The authors declare no conflicts of interest.

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