

SMALL CLAIMS COURT: FORMAL VERSUS INFORMAL PROCEDURES TO SOLVE CONSUMER DISPUTE

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ABSTRACT

Globalization has impacted many aspects of human life, one of which is an acceleration of trade transactions between producers and consumers. Thus, it potentially causes various legal disputes, and in most cases, the consumer suffers loss. In general, consumer disputes involve small amount of loss and complaint filed by the consumers for material compensation, so the prompt, simple, and cost effective principle shall also be applied in conducting the consumer dispute settlement. This article is intended to analyze the current consumer dispute settlements and identify the barrier in practice. By using the normative-empirical method and the specification of this research conducted in descriptive-analytical manner, the result of this article will recommended reconcile of consumer dispute settlement in Indonesia by applying the method of small claims court in order to create an effective, efficient law and provides legal certainty.

Keyword: Consumer Law, Dispute Settlement, Procedure Law, Small Claims.

INTRODUCTION

Legal entities and human beings are legal subjects. It has become a nature of a human as a social animal to require social interaction with one another. Different objectives in social interaction can cause conflicts of interest. Conflicts that cannot be resolved will develop into disputes. Disputes can be settled through dispute settlement mechanisms.

Conflict or dispute is a contradiction of opinion between two or more persons than can be settled in court. A dispute commonly occurs in a society, when people interact with each other and they have different perceptions, interests, and pretensions towards an occasion or situation.

Principally, law enforcement is connected to dispute settlement conducted by the judicial power which is constitutionally known as the judiciary body (Article 24 of the Indonesian Constitution). The judiciary institution is a body with authority to examine and render rulings to any dispute including business disputes, hereof examined and rendered by the District Court pursuant to Article 2 (4) Law Number 48 of 2009 re: Judicial Power (hereinafter referred to as the “UUKK”). The principle stipulated is based on such a regulation is that the examination of the dispute shall be conducted in simple, prompt, and cost-effective manner. However, many problems occur in the court practice. Such problem includes the extensive time limit required to examine and render a court decision (more than 60 days). Such problems caused by several

barrier factors, inter alia, the number of parties, the complexity of disputes, the human resources of law enforcement, and many other factors. At the end, such barriers cause dispute settlement to be carried out in not prompt, not simple, and costly manners. This condition inflicts abundant loss for parties, especially for the plaintiff with small amount of claim. The adversarial approach brought by court in examining the dispute is pursuant to normative, formal, bureaucratic regulation and render a win-lose solution that often satisfy legal justice for parties thereto. The time and cost involved in settle the dispute is not equal to loss suffered by the plaintiff (consumer).

Many citizens have elected the court to examine and render decision of their dispute. However, the judicial system often is not conducted pursuant to the formal procedures provided by the law. The Supreme Court realized that this condition potentially sets aside truth, justice, and legal certainty for disputing parties; and in the end, the disputing parties also suffer economic loss (Harahap, 1995). Accordingly, the court is deemed ineffective and inefficient in examining and rendering rulings over the dispute among the disputing parties thereto. On the other hand, the court remains to provide legal certainty under its formal ruling.

The abovementioned condition has encouraged the development of “*out of court*” dispute settlement or broadly known as alternative dispute resolution. The final decision rendered in alternative dispute resolution and arbitration is formally final and binding. However, it has no executory title, and accordingly, the function of the court is still needed to execute such a decision (resolution/award). Furthermore, the law provides that probability for an alternative dispute resolution or arbitration award to be annulled upon the request of other party through the District Court. Consequently, in many cases, such an award/decision is practically non-executable and no legal certainty is achieved.

One of the out-of-court dispute settlements is consumer dispute settlement as stipulated in Law Number 8 Year of 1999 re: Consumer Protection (hereinafter to be referred to as the “*UUPK*”). The definition of consumer disputes is not explained in Law No. 8 of 1999 on Consumer Protection, but it is found in the Decree of the Minister of Industry and Trade No. 350/MPP/Kep/12/2001 on Implementation of Duties and Authorities of the Consumer Dispute Settlement Body, which states that consumer disputes claiming compensation for damage, pollution and/or suffering losses due to consumption of goods and/or utilizing services. Az. Nasution (Nasution, 2011) argued that consumer disputes are disputes between consumers and business actors (public or private) about consumer products: certain goods and/or services. To determine whether a dispute is considered a consumer dispute or not, it should be noted whether the consumer in dispute is a consumer as intended by the consumer in Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as “*UUPK*”) and the disputed product is as a consumer product. Based on existing theories, consumer dispute resolution can be conducted peacefully, through the court or the Consumer Dispute Settlement Body (BPSK) (McDonagh, 1998).

Such a settlement can be conducted through arbitration, mediation, consolidation in BPSK or through litigation in the District Court. Consumer dispute settlement through BPSK is simple, prompt, and less costly. However, each of the disputing parties may submit for an appeal against the BPSK award through the District Court. Upon such appeal against the BPSK award, the panel of judges may also render null the decision of such award.

Pursuant to the above explanation, it is obviously clear that if a consumer dispute with a small amount of claim is to be settled in a district court, it will then face complex procedures. On the other hand, if it is to be settled in out-of-court settlement, then it will not provide sufficient legal certainty for the parties.

Basically, a citizen has the right to elect the forum in settling their civil dispute, whether through court or out-of-court. However, as mandated by the Indonesia Constitution, the judicial body (court) shall improve and develop its system in order to provide excellent court for the benefit of citizen who seeks justice. On the other hand, the out-of-court dispute settlement system shall also be reformed to maintain the excellent procedure that can provide a prompt and simple procedure.

In this globalization era, in which there is acceleration in the economic and business growth, Indonesia urgently requires an accessible climate, not only in matter of capital, but also the existence of access to justice for all entrepreneurs and consumers.

Prior to 2015, the same legal procedure is applied and valid for any type of civil claim, without considering the amount of the claim. Under the Regulation of Supreme Court Number 2 Year of 2015 re: Small Claims Court, and now regulated under the Supreme Court the Regulation of Supreme Court Number 4 Year of 2019 introduces small claims procedure with the claim amount maximum at 500 million Rupiah .

Pursuant to the recent research, the Small Claims Court (SCC) is effectively applied in practice, especially in several cities. However, this Small Claims Court does not revoke the existence and authority of BPSK This is because the Regulation of Small Claim Court has lower grade in the regulation grading system compared to the regulation of BPSK Furthermore, the Regulation of Small Claims Court does not specifically mention anything about consumer dispute, even though the majority of the consumer disputes are at the amount below 200 million Rupiah.

Basically SCC is a civil claim procedures with small claim amount, simple, informal, prompt procedure, less cost . By applying the SCC, the claim will be examined and a ruling rendered in less time compared to the other regular civil claims.

Ideally, in the future, the small claim procedure in Indonesia shall be applied not only to examine and render decision for small amount business claims but also to examine consumer disputes as currently conducted in other countries, both with common law system and civil law system. The small claims procedure shall extend the authority of the court by giving authorization to examine and render decisions in consumer dispute claim.

This article is important to be presented since currently, consumer dispute settlement conducted in several procedures especially out-of-court procedures and mostly do not provide satisfaction for the disputing parties and practically cannot be executed. Furthermore, the existence of the court is also deemed unable to fulfill the effectiveness in examining the dispute. Accordingly, the development in law shall be conducted through re-actualization of law (regulations) and judicial institution reform in order to fulfill the requirement of modern society, high technology, advanced trading, and global economic development. Thus, the small civil procedure shall be placed as a part of the court's authority in examining and rendering decisions in consumer dispute, as carried out in several countries. At the end, this small civil procedure can provide a prompt dispute settlement like an out-of-court settlement and provide legal certainty as the nature of a court litigation decision (Mertokusumo, 2006).

Consumer Dispute Settlement

The formal definition of dispute settlement is not stipulated in UUPK. Instead, it is stipulated in the Decree of the Minister of Industry and Trade of RI Number 350/MPP/Kep/12/2001 re: The Conduct of Duty and Authority of Consumer Dispute Settlement Body, which states that a consumer dispute is a consumer dispute which pursues compensation towards damages, loss, or disadvantage caused by the use of goods and/or services..

The consumer dispute is dispute between the consumer and the entrepreneur (public or private) (Nasution, 2011) in respect of the consumer product, certain goods and/or services. In order to classify whether a dispute is a consumer dispute or not, we shall consider the definition of “*consumer*” as stipulated in the UUPK and the disputing product is a consumer product. UUPK has regulated three types of dispute settlement methods between the consumer and the entrepreneur, as follows:

1. Amicable settlement;
2. Settlement through BPSK (Consumer Dispute Settlement Body)'
3. Settlement through the District Court.

Another method in settling consumer dispute is through the Financial Services Authority (OJK) as stipulated in several regulations. The mechanism is divided into two parts, namely (1) internal settlement between the consumer and the financial services institution; and (2) external settlement through LAPS or court.

Small Claims Prosedure

Small claims court (Gardner, 2004) is defined as an informal court (out-of-court mechanism) that promptly examines dispute to render decision of compensation or debt in small amount. Baldwin in his book defines that small claims court is an informal court, simple and inexpensive, and having legal binding decision. In this matter, the disputing party is able to submit their claims without lawyer/advocate services. Hereinafter, the judges shall examine and render a decision in an intensive approach (Baldwin, 2003). The procedure of small claims court is called small claim procedure. The purpose of the small claim procedure is to examine and render a decision in a prompt, cost-effective, and less formal and complex procedure (Christoper, 1990).

The purpose of the concept of the small claim procedure is to provide prompt and economical solutions to settle disputes. This is in line with the purpose of the small claims court, namely, to provide formality for citizens to submit a claim without assistance from lawyer and has small claim amount. (Local Courts Act 2007 s35(2), New South Wales Consolidated Acts).

Furthermore, the examination of the claim is not complicated and quite simple which does not require high cost as when submitting claims to the court. In small claim court, both disputing parties submitting respective claims to the judge and similarly, the judge, are not required to have specific legal knowledge to be applied in the simple dispute.

The mechanism of small claim court is varied from a country to another. In Ireland, the small claim court is defined as a services conducted by District Court through a claim submitted

by consumer against the goods or services provider (Donagh, 1998). However, this indicates that the small claim procedure in Ireland is specifically related to the consumer suffering damage. Furthermore, most small claim procedure is not only related to the consumer disputes, but also applied in other civil claims.

RESEARCH METHOD

This study applies normative legal research method. This legal study was developed based on legal knowledge with all the ideosyncracies that result in a typical legal research, which subsequently known as a normative legal research (Soerjono et al., 1990). The approach used in this study is normative juridical, i.e., the approach that based on the applicable legislation as a positive legal norm (Harnitiyo, 1982), especially Protection Law Act and The Supreme Court Regulation, number 4 of the year 2019. In addition to applying normative juridical research, this study also utilizes empirical normative legal research method. The method examines the implementation of positive legal provisions (legislation) and factual contracts on any particular legal event that occurs within the community in order to achieve the purpose. The assessment aims to ascertain whether the results of the application of in concerto legal event are appropriate or not in accordance with the provisions of the law or the terms of the contract. The Empirical (applied) normative legal research originates from the provisions of written positive law which are applied to in concerto legal events in the society. The implementation is realized through real action and legal document. The result of the application explains whether the provisions of the law or the contract have been appropriately implemented or not (Abdulkadir, 2004). Method employed in the research for this article is the normative study, specifically focusing on library data, or secondary data in the form of legal principles, norms of civil procedure law, and comparative law.

RESULT AND DISCUSSION

Consumer Dispute Resolution Through by Consumer Dispute Settlement Body

The complexity and high competition in business transactions, both domestic and international, potentially bring about many disputes. Disputes arise from the business activities or commercial business are generally called business and commercial dispute (hereinafter to be referred to as “*business dispute*”) (Uncitral Model Law, 1991). The business dispute as discussed in this article is limited to small amount dispute or claim among the legal subjects or towards certain business disputes such as consumer disputes.

According to information given by the Head of Central Jakarta District Court, within three years (2012-2015), the Central Jakarta District Court has examined and rendered decisions with large claim amount, mostly in relation with breaches of contract. On the other hand, based on interview with I Gde Ngurah Arya Winaya as a judge in Surabaya District Court states that the District Court of Surabaya (one of the major cities in Indonesia), has examined and rendered decision on business disputes with large claim amount and also on small claim amount 100-200 million Rupiah. Such disputes arise from loan agreements and security object transfers in banking and other financial services transaction. Furthermore, within three years (2012-2015),

there had been several appeals against decisions/awards of BPSK (Consumer Settlement Dispute Body) or KPPU (Supervisory Board of Business Competition) submitted to the district court.

The existence of BPSK philosophically is intended to examine and settle dispute between consumer and entrepreneur, in which initially the BPSK settled consumer disputes with small claim amount. The government established the BPSK in order to create equal justice for consumer since it is understood that if consumer disputes with small claim amount were to be submitted to the district courts, the decision will not provide equality between the litigation cost and the indemnity obtained by the damaging consumer. Accordingly, the procedure of examination the case is conducted in limited time frame. Within 21 days, BPSK shall render the decision. The procedure is also administratively simple. The cost incurred by the parties is also affordable.

The principles of promptness, simplicity, and cost-effectiveness in settling the dispute have generally been applied in practice. Furthermore, in some BPSK cases, the parties are exempt from paying charges. This is also in line with the purpose of the establishment of the BPSK to assist the duty of the district courts. The decision rendered by BPSK is merely compensation to indemnify the loss incurred by consumer and decide several actions to guarantee the right of such consumers. BPSK is authorized to decide the material compensation and is not allowed to decide the immaterial compensation (Wheelan, 1990).

The formation of BPSK is also intended to help to reduce the workload of District Courts. Therefore, BPSK only handles civil cases that generally claim compensation for losses suffered directly by consumers for errors and/or negligence of the business actor. In resolving consumer disputes, BPSK acts only to determine the form and amount of compensation as well as determine certain actions to ensure that there will be no repeat of losses suffered by consumers. BPSK is only authorized to impose compensation from business actors to consumers materially, not immaterial compensation.

The results of consumer dispute settlement through BPSK can basically be divided into 2 (two), namely the outcome of a consumer dispute settlement by means of conciliation or mediation made in a written agreement signed by the consumer and the business actor. The written agreement is then strengthened by the decision of the BPSK assembly signed by the chairman and members of the assembly. The decision of the BPSK assembly does not contain administrative sanctions. Whereas the outcome of the consumer dispute settlement by way of arbitration is made in the form of an assembly decision and signed by the Chairperson and Members of the Assembly. The decision of this assembly can contain administrative sanctions.

BPSK is more like a formalized adat [traditional] institution, and accordingly, the performance of the settlement fully depends on the willingness and good faith of the disputing parties. In practice, the appointment of the BPSK as a settlement forum is pursuant to written or oral consent of the disputing parties. The majority of disputes settled in the BPSK in Bandung are those in transfer of receivables of banking and financial services institution, especially receivables guaranteed by motorcycles. Meanwhile, the most disputes examined by the BPSK of Yogyakarta are leasing, banking, and housing disputes. However, after 2016, the BPSK of Yogyakarta has rejected disputes in banking transactions since there has been a new regulation with respect to alternative dispute resolution in financial services. Below are statistical charts describing the number of disputes examined by the BPSK of Bandung and the BPSK of Yogyakarta?

In practice, the submission of claims through the BPSK is addressed to the nearest BPSK office. The claim can be submitted in writing or orally. The first important thing to be examined by the BPSK is whether BPSK is entitled to examine and render a decision.

Reconcile Consumer Dispute Resolution in Indonesia Through the Small Claims Court

In addition to the above description, the performance of the judicial institution has been criticized due to complication of problems occurring Indonesia. The process of the settlement is deemed to be running slow, of high cost in litigation, and the court is deemed to be not responsive in settling the dispute, and accordingly, the decision rendered is not providing appropriate solution. Furthermore, there are a large number of unsettled disputes waiting to be settled in the Supreme Court. A study by the World Bank also indicates that one of the hindering factors of such a condition is caused by the inefficiency of the first instance court settlement. A long period of time needed to settle the dispute has caused not only a waste time but also restrict the access to obtain justice for common citizens.

The writers are in an opinion that the reform in judicial system for the law development of a country can be achieved if the public legal services can be performed in effective time frame, with simple procedures, and at an affordable cost. Basically, the judicial system principles are already well set forth in several regulations. However, the barrier in practice often occurs due to the complicated procedure at the court. The principle of promptness is in relation the time required to examine the claim starting from the submission of the claim up to the decision rendered by the judge. If the examination of the dispute (claim) can be conducted promptly and a simple manner, the cost will also be lower (Bou, 2017).

The prompt procedure conducted in examining the small claim is a huge step taken by the Supreme Court as the part of the reform to the judicial system. This prompt procedure is not recognized earlier both in HIR or Rbg. The purpose is to provide prompt, simple and cost-effective access of justice for citizens.

The Draft of Civil Procedure Law ("*Draft of Procedure Law*") is being drafted currently to replace the former regulation. In the Draft of the Procedure Law, the Small Claims Court (Gugatan Perkara Sederhana) has not been stipulated yet. Ideally, the Small Claims Court shall be stipulated in the Draft of the Procedure Law and shall not be regulated separately. The nature of the civil procedure law as a contrive law made the civil law procedure to be regulated in one unified regulation. Considering that the Draft of Procedure Law in the drafting process, it is suitable if the content under the Regulation of Supreme Court re: Small Claim Court is merged into such Draft of Procedure Law.

As the comparative study of the countries with small claims court practice, both in civil law system and common law system, the Small Claims Court is stipulated in a Law (Undang-undang), for example: the Implementation Act in the Netherlands and the SCT Act in Singapore. Accordingly, the Small Claim Procedures shall be integrated into the national civil procedure law in order to create a unification of procedure law.

The Regulation of the Supreme Court re: Small Claims Court conducted promptly is actually different from the Small Claims Court in other countries. However, the purpose remains the same, namely, increasing the citizen's right to obtain access to justice. The reconcile of Small Claim Procedure is intended to provide prompt and economical solution in settling the dispute

among the disputed parties. Commonly, the Small Claims Court also known as the real “*People’s Court*”. This is in line with the purpose of the Small Claims Court, namely, to provide small and technical formalities as an appropriate consideration of the claim substance, simple examination of the claim, and less cost to exercise the formal litigation. The existence of small claim court is intended to adjust the condition to the ASEAN free trade since 2015 which will potentially arise dispute in business transactions, especially transaction related to the consumer.

Due to the fact described earlier that the consumer dispute settlement, both in formal general litigation and out of court settlement, is deemed unable to fulfill the access to justice for consumers, it is necessary to bring the bridge between both by applying the small claim procedure in consumer dispute settlement specifically. It is to answer the necessity of legal certainty as well as justice for the consumer in consumer dispute settlement practice. The most effective step includes the consumer dispute as one of the object of dispute in the Regulation of Small Claim Court or further in to the Draft of Procedure Law.

Finally, the consumer dispute in litigation will be settled in a prompt, , simple, and cost-effective procedure. The amount of cost and time will be equal to the procedure required in civil claim procedure. The current problem in settling the consumer dispute through the alternative dispute resolution and formal litigation is solved by applying the small claim court. Thus, this small claims court is dedicated to the disputed party that seeks for formal and simple litigation. If the disputed party in consumer dispute does not elect the BPSK to examine the dispute due to the barrier issue of the legal and binding resolution, then the disputed party shall have other appropriate alternative by submitting the claim through such Small Claims Court with Small Claim Procedure that will give the parties access to justice. Hopefully, the dispute in consumer transaction will be settled effectively and efficiently and will encourage the development of law itself in Indonesia.

This introduction of a new concept of consumer dispute settlement in Indonesia is by applying the method of small claim procedures thereto, in order to create an effective, efficient resolution and provides legally certain and access to justice for any citizen.

CONCLUSION

The practice of consumer dispute settlement through district court has been conducted in accordance with the prevailing laws, however, the legal purpose to obtain the legal certainty, justice with prompt, simple and less cost litigation is not achieved due to long term period required, graded procedure and high cost spent in maintaining the consumer dispute through the District Court. Furthermore, the consumer dispute through out-of-court settlement in the BPSK (Consumer Dispute Settlement Body) also faces the legal problem especially in competency issue and the execution of the BPSK decision/award.

The bridge to solve such current problem in consumer dispute settlement is through a reconcile the new concept of consumer dispute settlement in Indonesia, by applying the method of existing Small Claim Procedures in Small Claims Court, in order to create an effective, efficient resolution and legally certain to and access to justice for any citizen. Particularly, the fast procedures arranged Supreme Court Regulation Number 4 of the year 2019 accelerate the process and bring benefits to obtain a means of resolving disputes efficiently and effectively in

order to realize justice carried out with the principle of simple, fast, and low cost. Small claims court in Indonesia is an informal versus formal mechanism, with fast decision process.

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