

## THE SIGNIFICANCE OF LEGAL REASONING IN CONSUMER DISPUTE SETTLEMENT THROUGH THE CONSUMER DISPUTE SETTLEMENT AGENCY (BPSK) IN INDONESIA

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### ABSTRACT

*Consumer dispute resolution in Indonesia could be accomplished through litigation (Court) or non-litigation (out of Court). The presence of non-litigation consumer dispute settlement institution and its procedure (Consumer Dispute Settlement Agency -- in Indonesia called BPSK) was to be an expectation of the appearance of a fair, simple, quick and low cost consumer dispute resolution. The presence of BPSK members coming from the government, business actors and consumers having various educational backgrounds would be a challenge to propose logical legal reasoning so as to make fair decisions. This paper is a conceptual study, which aims to provide a description and argument about the significance of legal reasoning in resolving consumer disputes through BPSK. Consumer dispute resolution through BPSK showed the importance of the existence of BPSK individual members in arguing that could be reviewed through legal reasoning. Legal reasoning is the spirit of every effort in interpreting the law to make a decision. In other words, legal reasoning had a very important role in guiding the authorized legal subjects in deciding upon a legal dispute in order to determine the effective meaning of the law.*

Keywords: legal reasoning, consumer dispute, consumer dispute settlement agency.

### Introduction

Indonesia having a large population<sup>1</sup> is a potential market for goods and services circulation and this fact will spur increasing the investment, industry and trade activities. Globalization has factually made economic activities more diverse and over the countries' territorial borders. This encourages business actors to conduct business activities in various fields, namely in production, distribution and service affairs.

Industrial and trading activities are growing as they are supported by technological advances. Innovation and modern technology in production, information, communication and transportation enable mass production process and mass distribution process to various places. Such development and progress have an impact on increase of the variety of products and services produced and/or distributed by business actors.

This condition, on the one hand, benefits the consumers because they will have a lot of choices to get good and service products but, on the other hand, the consumers will possibly be the business activity objects conducted by the business actors bombarding them with various kinds of goods and services. The consumers will be increasingly stimulated to act consumptively by the presence of advertisement in various places and media.

Indonesian (consumer) society has a heterogeneous condition, in terms of education, economic ability, and level of legal awareness and this will greatly affect the level of awareness, willingness and ability to respond when their rights as consumers are violated. The ability of the consumers to gain an access to justice is strongly influenced by these factors. According to Ward Berenschot and Adriaan Bedner<sup>2</sup>, lower class Indonesians are often at a disadvantage when faced with the court system.

The business actors, by their power in capital, technology and distribution network, will possibly conduct dishonest business activities and they even possibly violate the law in order to gain a great profit. This could be possibly done in the production process ignoring the product's quality and safety and it means that they ignore the consumers' interests and rights. The consumers in turns will bear the consequences as they get low quality products or services. They will not only experience financial losses since the prices are not in accordance with the quality but they frequently suffer illness and even death after consuming the products got from such business actors.

<sup>1</sup> Based on data of the Central Bureau of Statistics (BPS) the total population of Indonesia in 2015 was 255,461,700 and was projected to 271,066,400 in 2020; <https://www.bps.go.id/linkTableStatis/view/id/1274>; downloaded on June 2, 2017

<sup>2</sup> Ward Berenschot and Adriaan Bedner, *Akses terhadap keadilan: Sebuah pengantar tentang perjuangan Indonesia menjadikan hukum bekerja bagi semua orang*, in Ward Berenschot, Adriaan Bedner, Eddie Riyadi Langgut-Terre, Dewi Novirianti (Ed.), (2011), *Akses Terhadap Keadilan, Perjuangan masyarakat miskin dan kurang beruntung untuk menuntut hak di Indonesia*, Jakarta: Huma - KITLV - Episteme Institute, Leiden: Van Vollenhoven Institute, p. 17.

All stakeholders, that is the State, business actors and consumers, have a shared responsibility to realize consumers' protection. The primary duty of the legal bearers in the level of legislation, judicial or execution is to identify and realize *bonum commune*<sup>3</sup>. The common goals and common good of all Indonesian people have been formulated in Pancasila and the 1945 Constitution. The development of the legal system, including the law of consumer protection, must be strongly supported by the politics of economic law which is based on Pancasila and the 1945 Constitution. Protection and granting justice to every citizen (consumer) is one of the aspects that must be realized together.

In 1998 the People's Representative Council (the Indonesian Parliament/DPR) exercised the right to initiate to formulate a legal drafting on consumer protection and an Act Nr. 8/1999 on Consumer Protection (hereinafter named UUPK) was promulgated on April 20, 1999 and it came into effect one year later. The birth of UUPK was an important milestone in the field of consumer protection law in Indonesia although prior to the issuance of the UUPK some regulations on consumer protection had existed and spread in various areas of law. Consumer protection issues had been included in the consumer protection law system in particular and economic laws in general. The issuance of UUPK was not the initiative, the need and the pressure from within the country only but the situation of mutual influence and interdependence had been a necessity in the global era.

General elucidation of UUPK argues that UUPK is to be an umbrella (umbrella act) which integrates and strengthens law enforcement in the field of consumer protection. The establishment of UUPK is an effort to empower consumers in order to protect the consumer's interests integrative and comprehensively and it can be applied effectively in the community. The tool of law protecting consumers is not intended to turn off activities of the business actors but, on the contrary, consumer protection will create a healthy business climate encouraging the birth of a tough company in facing the competition of qualified goods and services provision. Article 1 UUPK stipulates that consumer protection is any effort that ensures the legal certainty to give protection to consumers. The rights and obligations of both consumers and business actors are normatively regulated in UUPK.

In transactional practices of consumers and business actors violations are still often found, especially violations against consumer's rights. In such a circumstance potential disputes between consumers and business actors will be widely open. Consumer disputes are disputes regarding with the violations of the consumer's rights. Its scope covers all legal aspects that are civil, criminal and state administration<sup>4</sup>. Based on the charts built in UUPK, the consumer dispute is a dispute between the consumer and the business actor because the business actor refuses and/or does not respond and/ or does not comply with the demand for compensation filed by the consumer as regulated in Article 19 of UUPK. This Article states that business sector is responsible to provide compensation for the damage, pollution and/or loss of the consumer due to consuming goods and/or services produced or traded. It is concluded by the provision of Article 23 of UUPK stating that business actor who refuses and/or does not respond and/or does not compensate for the consumer's demand as regulated in Article 19 of UUPK could be sued through the Consumer Dispute Settlement Agency (BPSK) or to a judicial institution of the consumer's hometown.

Theoretically and normatively consumer disputes can be resolved through judicial institutions but in practice and in reality they are not easy to accomplish because of various causes that are juridical-political-sociological<sup>5</sup>. Firstly, it concerns with the credibility and consistency of the judiciary over its decisions. Secondly, it concerns with the consumer's own reluctance to litigate in court even though his rights have been violated and have been impaired. Thirdly, there is conflict of interests between economic actors and certain parties that are difficult to reach by the law.

The settlement of disputes through the judiciary (litigation process) generally resulted in adversarial agreements that have not been able to accommodate common interests but they even tend to cause new problems, are slow, costly and cause hostility among the parties<sup>6</sup>. Therefore, the presence of non-litigation consumer dispute settlement institutions and procedures is to be an expectation of a simple, quick and light cost consumer disputes settlement. Article 47 of UUPK stipulates that the consumer disputes settlement conducted outside the court is held to reach an agreement on the form and amount of compensation and/or concerning certain actions to ensure that the losses suffered by consumers will not happen again or will not recur.

Consumer Dispute Settlement Agency (BPSK) as an alternative institution of consumer disputes settlement outside the court is expected to become the focus of consumers to be able to resolve disputes with business actors quickly, cheaply and fairly. The other side, referring to the various writings and research results<sup>7</sup>, indicates that consumer disputes settlement through BPSK still has weaknesses from the aspects of its legal substance, resources and institutional and legal culture. Several articles of UUPK, especially those regulating the procedural law are contradictory. The resources that are human and infrastructure resources and budgets are still facing many obstacles.

<sup>3</sup> Since Socrates, in classical times, to contemporary Finnis, law was commissioned to realize *bonum commune*, embodying the common good, Yovita A. Mangesti, Bernard L. Tanya (2014), *Moralitas Hukum*, Yogyakarta: Genta Publishing, p. 77.

<sup>4</sup> Shidarta (2006), *Hukum Perlindungan Konsumen Indonesia Edisi Revisi*, Jakarta: Grasindo, p. 165.

<sup>5</sup> Yusuf Shofie (2003), *Penyelesaian Sengketa Konsumen Menurut UUPK Teori dan Praktek Penegakan Hukum*, Bandung: Citra Aditya Bakti, 2003, p. 12.

<sup>6</sup> Rachmadi Usman (2013), *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, Bandung: Citra Aditya Bakti, p.5

<sup>7</sup> See: Kurniawan, *Permasalahan dan Kendala Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen (BPSK)*, Jurnal Dinamika Hukum Vol. 12 No. 1 Januari 2012, Fakultas Hukum Universitas Jendral Soedirman; Susanti Adi Nugroho (2011), *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara serta Kendala Implementasinya*, Jakarta: Kencana, p. 209-236

The competencies and capabilities of BPSK members in general have not met the expectations. Most BPSK members still adhere to legal-positivistic, very rigid and normative-narrow legal punishment in reading the text of the law whereas in consumer disputes settlement where the consumer position is usually very weak dealing with powerful big business actors, non-juridical aspects such as economic, psychological and cultural aspects are very important to note. BPSK members are required to have the ability to develop arguments as legal reasoning logically in order to produce fair decisions.

## Discussion

### 1. Consumer Dispute Settlement through Consumer Dispute Settlement Agency in Indonesia and its Implementation Constraints

According to Az. Nasution, a consumer dispute is a dispute between the consumer and the business actor (public or private) about a consumer's product, certain consumer goods and/or services<sup>8</sup>. Meanwhile, Shidarta argues that consumer disputes are basically a dispute regarding the violation against consumer's rights covering civil, criminal and state administration legal aspects<sup>9</sup>. Act Nr. 8 of 1999 on Consumer Protection (UUPK) itself does not provide explicit limits on the definition of consumer disputes but the term of 'consumer dispute' can be found in some parts of UUPK, namely<sup>10</sup>:

- a. The mention of consumer disputes as part of institutional mention of state administrative institutions having the authority of settling the disputes between business actors and consumers, in this case the Consumer Dispute Settlement Agency (BPSK), Article 1 point 11 jo. Chapter XI UUPK;
- b. The mention of consumer disputes concerning the procedure or dispute settlement is found in chapter X on Dispute Settlement. This chapter consistently uses the mention of consumer disputes, namely Article 45 paragraph (2) and Article 48 of UUPK.

Bernadette M. Waluyo<sup>11</sup> states that the definition of consumer dispute is not explicitly contained in the UUPK but it can be inferred from the provisions of Article 23 UUPK stating that business actors who refuse and/or do not respond and/or do not meet the compensation for the consumer demand as referred in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), may be sued through the Consumer Dispute Settlement Agency (BPSK) or filed to the judiciary in the consumer's hometown. Thus the definition of consumer dispute is a dispute between the consumer and the business actor because the business actor refuses, and/or does not respond, and/or does not compensate the consumer's demand as regulated in Article 19 of UUPK.

Based on the above understanding it can be concluded that consumer dispute is basically a dispute in the legal relationship between the consumer and the business actor because the consumer's rights are violated by the business actor but the business actor is unwilling or refuses to be responsible. When a consumer dispute occurs, one of the elements in consumer protection is a fair consumer dispute settlement. Article 4 of UUPK states that consumers are entitled to appropriate advocacy, protection and dispute resolution efforts.

According to Az. Nasution, consumer dispute settlement can be done through peaceful means or mediation as well as through authorized institution. A dispute settlement through an authorized institution can be done by<sup>12</sup>:

- a. To complain or report about the consumer's matters through the relevant governmental institution which, under public law, has administrative authority over the companies within the scope of its authority.
- b. To incorporate a civil claim for damages because of promise breaching or acts against the law depending on the consumer's relationship with the offender doing act that harms him to the competent court.

When a consumer dispute occurs, one of the elements in consumer protection is a fair consumer dispute settlement. Article 23 of UUPK expressly stipulates that consumer disputes settlement can be done through litigation (court) and non-litigation (out of court). Any abused consumers may sue business actors through an institution in charge to settle the disputes between consumers and business actors or through the courts that belongs to the general judiciary. Consumer dispute resolution can be pursued through court or out of court based on the voluntary choice of the disputing parties.

The lawsuit for a business offense may be committed by: (a) an abused consumer or his or her heir; (b) a group of consumers having the same interests; (c) a qualified non-governmental consumer protection agency in the form of a legal entity or foundation having a constitution that expressly stipulates that the purpose of establishment of agency is for the benefit of consumer protection and has carried out its activities in accordance with its constitution; (d) the government and/or relevant institutions if the goods and/or services consumed or utilized have resulted substantial material losses and/or a lot of victims. The lawsuit submitted by a group of consumers, a non-governmental or government-owned consumer protection agency is submitted

<sup>8</sup> Az. Nasution (2014), *Hukum Perlindungan Konsumen Suatu Pengantar*, Jakarta: Diadit Media, p. 229.

<sup>9</sup> Shidarta, *op.cit.*, 2006, p.165

<sup>10</sup> Yusuf Shofie, *op.cit.*, p. 12.

<sup>11</sup> Bernadette M. Waluyo (2005), *Analisis Hukum Formal Dalam Undang-Undang Perlindungan Konsumen*, Bahan Penataran Nasional Dosen Hukum Perlindungan Konsumen, Bandung: Kerjasama FH Unpar-Ditjen Perlindungan Konsumen Departemen Perdagangan RI-YLKI, p. 3.

<sup>12</sup> Az. Nasutuion.*op.cit.* p. 232

to the general judiciary (Article 46 Paragraph 2). This means that the lawsuit cannot be filed through BPSK or it can be said that BPSK only accepts lawsuit from a consumer or his or her heirs. So the lawsuit filed by a consumer or his/her heirs may be filed either through the general court as well as BPSK.

The consumer disputes settlement conducted outside the court is held to reach agreement in the form and amount of compensation and/or regarding certain actions to ensure that losses suffered by consumers will not return or will not recur (Article 47). This provision leads to a settlement with conciliation and mediation mechanisms as it aims to reach agreement. This is confusing when associated with consumer dispute settlement through BPSK because in BPSK beside conciliation and mediation mechanisms, an arbitration mechanism is also possible.

Consumer Dispute Settlement Agency (BPSK) forms an assembly having odd number of members and at least 3 persons and assisted by a clerk (Article 54 Paragraphs 1 and 2) to deal with and settle the consumer disputes. BPSK is obliged to issue a decision within 21 working days after the lawsuit is received (Article 55) and the decision is final and binding (Article 54 Paragraph 3). The elucidation of Article 54 Paragraph (3) states that the decision of the Assembly is final and it means there is no appeal and cassation in BPSK.

After the trial is accomplished and the Assembly has issued a decision the Chairman of BPSK shall notify the decision of the Assembly, written, to the addresses of the consumer and the business actor in dispute not later than 7 (seven) working days after the decision is read out. Within 14 (fourteen) working days from the date of BPSK's disclosure the consumer and the dispute business actor shall declare the acceptance or rejection of the BPSK's decision. Business actors or consumers who reject the decision of BPSK may file an objection to the District Court within 14 (fourteen) days from the date the BPSK's decision is notified.

If the business actor declares to accept the decision of BPSK, the business actor shall implement the decision within 7 (seven) days from the date of declaring BPSK's decision. If the business actor rejects the BPSK's decision but does not file an objection until the deadline for submission of the objection is exceeded, the business actor is then deemed to receive the decision and shall implement the decision at the latest 5 (five) working days after the deadline for appeal is exceeded. However, if the business actor does not perform the obligation BPSK shall submit the decision to the investigator to conduct an investigation in accordance with the prevailing laws and regulations.

Business actors shall implement the BPSK's decision no later than 7 working days from the date of receiving the decision (Article 56 Paragraph 1). However, the parties may submit an objection to the District Court no later than 14 working days after receiving the notice of the decision. If there is a party having an objection, the District Court shall issue its decision within 21 days from the date of receiving the objection<sup>13</sup>. To the first grade court's decision the parties may still file a cassation to the Supreme Court within 14 days and the Supreme Court shall issue a decision no later than 30 days from the receipt of the request for a cassation.

The possibility of appeal and cassation in the process of consumer dispute settlement through BPSK indicates the inconsistency of the elucidation of Article 54 Paragraph (3) compared with the formulation of Article 58 of UUPK. Elucidation of Article 54 Paragraph (3) states that the meaning of the decision of the assembly (BPSK) is final is that in BPSK there is no appeal or cassation. However, Article 58 of UUPK stipulates that against the District Court's decision examining the objection of the party who filed the objection is possible to have appeal to the Supreme Court.

In the context of law implementation the influence of social forces cannot be avoided. Gustav Radbruch argues that there are 3 (three) basic values of law, namely justice, usefulness and legal certainty. The relationship of the three values is a tension of one to another (*spannungsverhältnis*)<sup>14</sup>. The UUPK's provisions on the inconsistent nature of the BPSK's ruling will create legal uncertainty and this legal uncertainty affects the value of justice and benefit, especially for consumers. The value of usefulness will lead the law to the consideration of the needs of society on a certain matter, so that the law really has a real role for the community<sup>15</sup>.

In 2014, from the institutional aspect, the Act Nr. 23 of 2014 on Regional Government was issued and this Act regulates, among others, the change of authority of consumer protection affairs from local government (district or municipality) to the provincial government. This provision is followed up by the issuance of Regulation of the Minister of Trade of the Republic of Indonesia Nr. 06 of 2017 on Consumer Dispute Settlement Agency (BPSK). This regulation basically regulates the establishment and operation of the Consumer Dispute Settlement Agency as under the responsibilities of the provincial government. This is not in accordance with Article 49 Paragraph (1) of UUPK stating that the Government establishes BPSK in each regency/municipality.

<sup>13</sup> Supreme Court Regulation Nr. 1 of 2006 on the Procedure of Submission of Objection to BPSK's Decision stipulates that the decision of BPSK which may be submitted to the District Court is BPSK's decision which uses arbitration mechanism and is conditioned: (i) the letter or document submitted in the examination, after the decision is imposed, acknowledged as false or falsely pressed; (ii) after the BPSK's arbitration decision is taken, a decisive document is found and was hidden by the opposing party; (iii) the decision is taken from the results of tricks by one of the parties in the dispute.

<sup>14</sup> Satjipto Rahardjo (1996), *Ilmu Hukum*. Bandung: Citra Aditya Bakti, p. 19

<sup>15</sup> Esmi Warassih (2011), *Pranata Hukum Sebuah Telaah Sosiologis*. Semarang: Badan Penerbit Universitas Diponegoro, hlm. 12

BPSK's resources has constraints, both human and infrastructure resources and budget as well. According to the regulation of UUPK, the membership of BPSK consists of 3 (three) elements, namely governmental element, business actor (business actor organization) and consumer (consumer organization). Al. Wisnubroto argues that most BPSK members still have legal-positivistic views when settling consumer disputes<sup>16</sup>. This means that the members of BPSK have a dogmatic-normative perception in viewing UUPK. In consumer disputes settlement where the consumer position is usually very weak and is faced with strong business actors, non-juridical aspects such as economic aspects, psychological aspects and cultural aspects are very important to note.

The way of law implementation of BPSK's members should be encouraged in order not to get caught up in legal-positivistic ways. This is due to the characteristics of consumer disputes are often specific and complex that requires a settlement that is not rigid and shackled solely just the sound of the law, particularly with the substance of UUPK that is limited and some remain problematic. In this regard it is interesting to see Satjipto Rahardjo's view on progressive law. Satjipto Rahardjo says that progressive law elevates the human factor of law enforcement as an important determinant in the course of law. Progressive law does not see the way of law "flat" but it contains strong modalities. The modalities are compassion, empathy, sincerity, and dare. As a consequence of the 'law for human' paradigm, law enforcement should not be flat but it should be full of conscience to protect and serve people<sup>17</sup>.

The role of BPSK's individual members is very influential in the process of dispute settlement. The symbolic interactional theory of Herbert Blumer<sup>18</sup> states that each individual can interpret reality differently. The meaning of each individual is strongly influenced by the social interaction of the individual with others. BPSK's members having different backgrounds that are from government, business and consumer backgrounds have different perspectives and attitudes in their role in settling consumer disputes. This is interesting because it will enrich the arguments among BPSK's members. However, to make the argumentation productive and able to encourage fair dispute settlement, adequate qualifications, capabilities and competencies of BPSK's members are required.

## 2. The Significance of Legal Reasoning in Consumer Disputes Settlement through Consumer Dispute Settlement Agency in Indonesia

The history of the consumer protection movement recognizes the doctrine of *caveat emptor*<sup>19</sup> and *caveat venditor*<sup>20</sup>. The *caveat venditor*'s doctrine is a reaction to the doctrine of *caveat emptor* that emerged in the United States in the 19th century and eventually evolved throughout the world. The strength of both doctrines is strongly influenced by many factors that develop in a country. These factors include: the availability of strong regulations in the field of consumer protection supported by the law enforcement, the parties run the doctrines as well as the culture of society as a whole. In Indonesia, as a developing country, the doctrine of *caveat emptor* is still considered relatively strong so that efforts are needed for a better consumer protection. One of the elements to direct and strengthen the doctrine of *caveat venditor* deals with a fair dispute settlement process.

Human life cannot be separated from conflicts and disputes<sup>21</sup>. Different situations and conditions surrounding human society can lead to conflicts and disputes in social, economic, political and cultural fields. In the economic field, especially trade, conflicts and disputes between consumers and business actors are easily to happen. This is triggered by the difference of interests between the two, or because of the violation of rights, especially consumer's rights.

As human life is always colored by conflicts and disputes, man has his own way to settle the disputes. In the development of human civilization, one of the ways in settling the disputes is to use legal instruments. Vilhem Aubert states that 'law as a way of resolving conflict'<sup>22</sup>. Hoebel concludes that one of the functions of law is to resolve disputes<sup>23</sup>. About how a law can work to resolve disputes can also be examined from the intake-outtake chart made by Harry C. Bredemeier<sup>24</sup> utilizing a great framework of the Talcott Parson's community system.

Bredemeier explains that the legal position as a social institution serves to integrate the processes that take place in society. The dispute is one of the intakes that must be processed by law, with various equipment's and authority and the result is

<sup>16</sup> <http://www.hukumonline.com/berita/baca/hol20267>

<sup>17</sup> See: Konsorsium Hukum Progresif Fakultas Hukum Undip (2013), *Dekonstruksi dan Gerakan Pemikiran Hukum Progresif*, Yogyakarta: Thafa Media, pp. vii-viii.

<sup>18</sup> George Ritzer, Barry Smart (2012), *Handbook Teori Sosial*, Bandung: Nusamedia, p. 429

<sup>19</sup> A Latin phrase meaning "let the buyer beware". This saying reflects the rule that the buyer of goods bears the risk of defects in them; Lauren Krohn (1995), *Consumer Protection and the Law A Dictionary*, California: ABC-CLIO, p. 33

<sup>20</sup> A Latin phrase meaning ' let the seller beware'. The expression is used to refer to the situation in which the seller bears the risk of defects in his or her products and must make good to the buyer for injuries or losses caused by them; Lauren Krohn, ibid., p. 34

<sup>21</sup> A conflict is a situation of two or more parties who are facing and having different interests. the conflict develops into disputes whenever the party who feels aggrieved is dissatisfied either directly or indirectly to the party that is considered the cause of the loss or to the other party; See Rachmadi Usman, *Choice of Dispute Settlement Outside Court*, Bandung: Citra Aditya Bakti, 2013, p. 3.

<sup>22</sup> Rachmadi Usman, *op.cit.*, p. 1.

<sup>23</sup> Esmai Warassih (2011), *Pranata Hukum Sebuah Telaah Sosiologis*, Semarang: Penerbit Undip, p. 24.

<sup>24</sup> Satjipto Rahardjo, *op.cit.*, pp. 143-144.

then a new structure that is issued again into the community. The book of Satjipto Rahardjo also explains that the legal work patterns used as a reference by Bredemeier is to place the 'Court' as the center of its activities<sup>25</sup>. Thus 'Court' is an institution that must be able to perform the function of law as a means of integration. 'Courts' in this context is defined as a place to settle the disputes.

As part of the social system working instruments, which is in human relations, the function of the law is not only about order but also justice. Justice according to Domitius Annius Ulpianus is a constant and continuous willingness to give everyone what is appropriate for him/her (*Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*)<sup>26</sup>. A more complete definition of Justice of Ulpianus is formulated in its original language: "*Honeste vivere, alterum non laedere, suum cuique tribuere*", which literally means "live honestly, do not harm others, and give to others what it is entitled to".

According to Shidarta<sup>27</sup>, the first dimension affirms that justice is a respectable individual life. Every individual of BPSK's members who maintains his/her honor is assured to maintain the honor of his/her social environment. Thus, justice is an ethical view of honor to self. The second and third dimensions of justice reflect the heteronomous aspects of the justice. The second dimension represents the respect to others' rights that are publicly agreed while the third dimension is to respect to privately-agreed rights.

Satjipto Rahardjo further explains that justice as Ulpianus' opinion is associated with the state of the soul or attitude of a person. People can only act justly when the person has certain mental attitude characteristics. Justice is not something that can be tinkered with logic and reasoning but it involves the whole person<sup>28</sup>. BPSK's members must have such a soul and attitude in order to make fair decisions. Thus, when the law is used to settle disputes the goal to be achieved is not just order and certainty but justice for those who want to settle the disputes.

About how Consumer Dispute Settlement Agency (BPSK) settle consumer disputes is strongly influenced by the presence of its individual members. The social and educational background of BPSK's members consisting of various backgrounds, namely government, business and consumer. Each will not possibly leave the background and interests attached. BPSK's members having different backgrounds will have different perspectives and attitudes in their role in settling consumer disputes.

BPSK's members must have ability to build arguments to be outlined in decisions. The arguments set forth in the judgment must reflect a logical legal reasoning. Legal reasoning is essentially related to how BPSK's members review and formulate an appropriate legal argument. Shidarta argues that legal reasoning is problematic thinking activities of the legal subject (human being) as an individual and social being within his cultural circle<sup>29</sup>.

Legal reasoning cannot be separated from the demand of maintaining the stability and predictability of a decision referring to the positive legal system. Arief Shidarta refers to as 'systematized problematic thinking'<sup>30</sup>. Thinking activities are focused on issues that are relevant to the legal subjects' interests, not to subjects in other contexts that mean that the problem of law is the problem of human's interest as a civilized creature<sup>31</sup>.

Legal reasoning of BPSK's members realized or not, is influenced by legal system family. The fact of Indonesia as a country that historically belongs to the civil law system family will affect the legal reasoning characteristics of the legal decision makers. Shidarta classifies the legal reasoning pattern of the country with the civil legal system family as 'systematic-problematic'<sup>32</sup>.

This pattern refers to a great flow of thought that 'law as it is written in the book'. Law is seen as a positive norm in the national legal system. An Act is seen as a major source of law so that legislators have an important role to play in determining the prevailing legal system. What is contained in the Act becomes a reference for lawmakers in solving concrete cases. The values of justice and benefit are considered contained in the Act so that the task of legal decision-makers is only to implement the Act in order to achieve legal certainty.

In the context of consumer dispute settlement in BPSK, the BPSK's members as legal decision makers, consciously or unconsciously, are flowed in the big current. This is not entirely wrong but legal reasoning contained in BPSK's decision should also consider other dimensions, namely justice and benefits dimensions, beside just legal certainty. This is important because legal reasoning is the spirit of any legal interpretation effort to produce a decision. In other words, legal reasoning has a very important role in guiding BPSK's members in deciding a consumer dispute to determine the effective meaning of the law.

## Conclusion

1. Consumer dispute settlement through Consumer Dispute Settlement Agency (BPSK) in Indonesia is normatively regulated by the Act Nr. 8 of 1999 on Consumer Protection and its implementing regulations. However, the implementation of these

<sup>25</sup> *Ibid*, p. 143.

<sup>26</sup> Satjipto Rahardjo (1980), *Hukum dan Masyarakat*, Bandung: Angkasa, p. 163.

<sup>27</sup> Shidarta, *Keadilan Menurut Ulpianus*, <http://business-law.binus.ac.id/2014/11/03/keadilan-menurut-ulpianus/>

<sup>28</sup> Satjipto Rahardjo, *Hukum dan...*, *op.cit.*, p. 165.

<sup>29</sup> Shidarta (2013), *Hukum Penalaran dan Penalaran Hukum*, Yogyakarta: Genta Publishing, p. 124

<sup>30</sup> Bernard Arief Sidharta (1999), *Refleksi Tentang Struktur Ilmu Hukum*, Bandung: Mandar Maju, p. 164

<sup>31</sup> Shidarta, *Hukum Penalaran*, *loc.cit.*

<sup>32</sup> Shidarta, *ibid.*, p. 135

regulations remains facing many problems from different aspects, namely regulatory substance, institutional structure, and resources.

2. One of the important aspects of making a fair BPSK's decisions is legal reasoning contained in the decision. Legal reasoning contained in the decision of BPSK should reflect the value of justice, not just legal certainty. The presence of BPSK's members that are from government, business and consumer elements having diverse educational and social backgrounds is a challenge to formulate legal reasoning that reflects the value of justice.

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