

Implementation of Reversal Burden of Proof Principle at Consumer Dispute Settlement Agency (BPSK) as a Legal Protection Effort for Consumers

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Abstract. BPSK as an alternative solution for consumer dispute outside of court given an option for an individual consumer and businessmen in order to settle a dispute they have. BPSK is a non-structural foundation but the verdict they given is final and binding therefore possess the same legal force for a disputing individual to obey. According to article 1 paragraph (8) of the decision of Ministry of Industry and Trade number 350/MPP/KEP/12/2001 on the implementation of BPSK authority and duty, consumer dispute is a dispute between businessmen and consumer which demand a compensation from defect, defilement, or any other deprivation afflicted by consumer because of consuming an item or using services from the businessmen. In order to achieve truth and justice verification become a vital part of a dispute settling process. Prosecutor and defendant are given verification burden, however article 28 of UUPK manage verification burden especially about settling consumer dispute that in order to settle consumer dispute there is a verification about whether there is a mistake or not within a lawsuit of compensation is a burden and responsibility of a businessmen, this verification is called reversal burden of proof.

Keywords: reversal burden of proof; consumer dispute; BPSK

1. Introduction

Problems are faced by consumers in consuming goods and services, especially regarding their quality, service and transactions. It shows that there are still many products that do not meet quality requirements. According to the government's consumer dispute settlement agency (BPSK) of DKI Jakarta province consumers who chose dispute settlement through BPSK in 2014, 2015 and 2016 amounted to 243 disputes, including property, credit card, insurance, electricity, parking, leasing, education, and flight transportation services [1].

BPSK as an alternative to resolve consumer disputes outside the court provides choices for individual consumers and businesses to resolve the disputes they face [2]. BPSK is a non-structural institution but the decision issued by BPSK is final and binding, so it has the same legal power for the parties to the dispute to be carried out.

In order to obtain the truth and fairness of evidence, it becomes an important part in the process of dispute resolution, the plaintiff and the defendant are given a burden of proof, but the UUPK in article 28 regulates the burden of proof specifically in the resolution of consumer disputes, that the proof of the existence of an element of error in the claim for compensation is a

burden and the responsibility of the business actor, this proof is called reversal burden of proof. Based on the description above the author discusses how the application of the principle of reversal burden of proof at BPSK as a legal protection effort for consumers.

2. Literature Review

Article 1 number 1 of Law Number 8 of 1999 about Consumer Protection: “Consumer protection is all measures which guarantee legal certainty to provide protection to consumers”. There were four basic rights consumers [3]:

1. The right to safety
2. The right to be informed
3. The right to choose
4. The right to be heard

Consumer protection law can be seen to merely set a floor in its pursuit of a sufficiently high level of consumer protection [4]. Ukwueze argued that consumer rights essentially seek to maintain human dignity and well-being in the market. Ukwueze concluded that consumer rights are evidently incorporated in human rights as there is a growing international recognition of consumer rights as human rights [5].

In the explanation of article 2 of the UUPK, it is stated that consumer protection is held as a cooperative/joint effort based on 5 principles that are relevant in national development, namely [6]: the principle of benefit, the principle of justice, the principle of balance, the principle of consumer security and safety, the principle of legal certainty.

Losses suffered by consumers due to consuming goods and services offered by business actors, giving consequences in the form of responsibility charged to business actors to provide compensation as stated in Article 19 paragraph 1 of Law No. 8 of 1999 on Consumer Protection (UUPK), the responsibilities of business actors include: [7] Liability for compensation for damages, pollution, and losses.

Article 48 of the UUPK states that the settlement of disputes through the court refers to the provisions that apply in the general court by observing article 45 of the UUPK, in addition to resolving disputes can be carried out outside the court, by applying the Consumer Dispute Settlement Agency (BPSK) as stipulated in article 49 to article 58 of UUPK. The Consumer Dispute Settlement Agency (BPSK) is one of the consumer justice institutions domiciled in each level II district/municipality throughout Indonesia, and has the main task of resolving consumer disputes outside the court institution.

To obtain truth and justice, proof is needed, the general principle of proof is that the plaintiff and the defendant are given a burden of proof so that in the process of proving consumer disputes, both consumers and business actors are equally burdened with proof, let alone proof of the civil court process requires the plaintiff to prove his claim. If this principle is applied in the process of proving consumer disputes, both consumers and businesses can be burdened with proof. Consequently, consumers must also prove that there is a business actor's fault, this is difficult because socially weaker socio-economic consumers, elements of business error in the production, distribution and sale of goods are difficult to prove by consumers [8].

Article 28 of the UUPK regulates the burden of special proof in the settlement of consumer disputes, that proof of whether or not there is an element of error in the claim for compensation as

referred to in Article 19, Article 22 and Article 23 is the burden and responsibility of the business actor. This proof is called reversal burden of proof which is carried out by charging the business actor for the existence of an element of error, while the consumer is burdened with proof of the loss suffered due to consuming goods and or services from the business actor [9]. Article 28 of this UUPK is a provision of a specific proof of burden from the general provisions in article 1865 of the Civil Code. In the principle of reversal burden of proof, the business actor must prove that he is innocent, otherwise the business actor is considered guilty and is obliged to provide compensation to the consumer[10].

3. Methodology

This study was a descriptive analytical study and normative juridical approach was applied as data collection technique to study literature. Then, the data were analyzed qualitatively by using juridical approach. The approach method used in this research is normative juridical. Analysis of the data used is a qualitative analysis.

4. Data Analysis

The position of consumers is often in a weaker position when compared to the position of business actors, this condition causes the importance of consumer protection to be upheld and carried out in accordance with applicable regulations, namely Law No. 8 of 1999 on Consumer Protection so that consumers are in a balanced position with the position of business actors.

4.1. Consumer Rights

In everyday life often some consumer rights are not applied properly, due to lack of legal awareness and ignorance or unwillingness of consumers to use and fight for their rights. On the other hand, some business actors act arbitrarily to obtain maximum profits without regard to consumer rights. These consumer rights are championed by consumer protection institutions including Indonesian Consumers Foundation (YLKI) known as the Five Consumer Rights (*Panca Hak Konsumen*) which consists of [11]: the right to obtain security and safety, the right to get true and honest information, the right to choose the goods or services needed, the right to express their opinions, the right to a healthy environment, the right to get compensation.

4.2. Business Actor

Juridically the producer is called a business actor, in UUPK the business actor is defined as any individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the legal territory of the Republic of Indonesia, both alone and jointly through the agreement holds business activities in various economic fields. Whereas according to the Law on Prohibition of Monopolistic Practices and Unfair Business Competition, business actors are any individual or business entity, whether incorporated or not a legal entity established and domiciled or carrying out activities within the territory of the Republic of Indonesia, both alone and jointly through agreements, holding various business activities in the economic field.

The purpose of consumer protection, among others, is to elevate the lives of consumers, so consumers must be avoided from the business activities of traders who bring negative consequences from the use of goods or services by consumers. Regarding such effort, therefore, the Law on Consumer Protection determines various prohibitions on business actors including: Business actors are prohibited from producing and trading goods and services that do not meet the standards, Business actors are prohibited from trading damaged, defective or used, and polluted goods, etc.

4.3. Consumer Dispute Settlement Through Consumer Dispute Settlement Agency (BPSK)

Consumer dispute resolution can be done in court or outside the court based on the voluntary choice of the parties. The dispute resolution is regulated in article 23 of the UUPK that business actors who refuse or do not respond or do not meet compensation for the demands of consumers, can be sued through BPSK or file a lawsuit with the judiciary at the consumer's place of domicile.

Procedures for the settlement of consumer disputes can be submitted in 2 ways, namely the settlement of disputes outside the court conducted through the Consumer Dispute Settlement Agency (BPSK), and the settlement of consumer disputes through court that refer to general court provisions.

The Consumer Dispute Settlement Agency has the authority to deal with and resolve consumer disputes by forming an odd assembly of at least 3 people, consisting of a chairman cum member, a vice chairman cum member, and a member. This Assembly must represent the element of the government, element of consumer, element of business actor and shall be assisted by a clerk, the decision of the panel is final and binding.

The Consumer Dispute Settlement Agency must achieve the objectives of consumer protection that should be empowering consumers in selecting and determining goods or services, creating a consumer protection system that includes elements of legal certainty, information disclosure, and access to information. Growing awareness of businesses regarding the importance of consumer protection so that they grow honest and responsible. The Consumer Dispute Settlement Agency must issue a decision no later than 21 working days after the claim is received, and no later than 7 working days after receiving the decision.

4.4. Reversal Burden Of Proof Principle

Consumers who feel aggrieved and their rights have been violated by business actors can file consumer disputes either through BPSK [12] or through general courts. The UUPK applies the principle of reversal burden of proof in the settlement of consumer disputes, the aim of which is to provide relief and convenience for consumers in filing a lawsuit. This principle of reversal burden of proof is regulated in articles 22 and 28 of the UUPK.

With the principle of reversal burden of proof filed by the consumer to the business actor, the obligation to prove is lying on the business actor as a defendant. In such consumer dispute a lawsuit can be filed through BPSK or the general court within the area of consumer domicile. The claim of default requires an agreement that has been previously made between business actor and consumer and the agreement which has been violated by the business actor. The claim for compensation based on unlawful acts must consider the provisions of article 1365 of the Civil Code, namely: There is an act against the law, There is a loss, There is a mistake, There is a causal relationship between loss and illegal conduct.

Consumer dispute settlement shall begin with submitting demands or complaints by consumers both in written and oral form through BPSK secretariat. BPSK is an institution outside the court that resolves consumer disputes based on kinship, deliberation and consensus so that both parties to the dispute are actively seeking the best solution to resolve the dispute.

According to Article 28 of the UUPK, whether or not there is an element of error in the business actor's act, the burden of proof shall be born by the business actor. The Assembly at BPSK must be able to determine whether there is a legal relationship between the consumer and the business actor and whether there is a consumer loss based on the evidence attached when filing a lawsuit.

Consumers are charged with the burden of proof of the loss they experienced, the verification is carried out when the consumer submits a lawsuit to BPSK by fulfilling the requirements for filing a lawsuit, namely attaching evidence that shows the loss of the consumer including goods or services complained, receipts, invoices, bills and other evidence.

5. Conclusion

Based on the discussion the author draw the conclusion that consumer dispute resolution at BPSK applies the principle of reversal burden of proof according to the mandate of the Law on Consumer Protection, that the burden of proof in resolving consumer disputes in which there is whether or not an element of error in the compensation claim shall be the burden and responsibility of the business actor and business actor must prove himself innocent if he wants to be free from consumer's compensation claims. While consumers are burdened to prove the loss suffered by consumers due to consuming goods and or services from business actors by fulfilling the requirements for filing a lawsuit, namely attaching evidence that shows the loss of consumers including goods or services complained, receipts, invoices, bills, and other evidence.

Suggestion

If a BPSK decision is not in accordance with the principle of reversal burden of proof as stipulated in the UUPK, the consumer is advised to refuse the decision by canceling such decision by submitting an appeal to the district court.

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