

Jurisprudential Analysis of BPSK Cancellation Related to Credit Agreements in Indonesia

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Abstract. Several credit agreement dispute resolutions through BPSK have been canceled by the District Court. The legal considerations for the cancellation of several BPSK decisions refer to the Jurisprudence of the Supreme Court Decision Number 27K / Pdt.Sus / 2013. This study aims to analyze the jurisprudence of the cancellation of BPSK decisions related to credit agreements in Indonesia. This study uses a qualitative normative legal research method with a case approach which analyzes the formulation of the problem with applicable legal principles. The results of this study indicate that there is a disagreement regarding the definition of consumer disputes, especially regarding the credit agreement between BPSK and the District Court and the Supreme Court. For this reason, it is necessary to have a clear and clear definition of consumer disputes and is written in a statutory regulation, especially regarding the settlement of credit disputes that occur in the community.

Keywords: Jurisprudence; credit disputes; BPSK

1 Background

Consumer dispute resolution can be done through litigation and non-litigation channels, regarding consumer dispute resolution carried out through non-litigation channels can be resolved through the Consumer Dispute Resolution Agency (BPSK). BPSK's duties include handling and resolving consumer disputes, by means of mediation, conciliation, arbitration. One example of consumer dispute resolution at BPSK Yogyakarta from 2009 to 2015 was very effective, because it could reach 100% (one hundred percent) while in 2016 the effectiveness was 50% (fifty percent), out of 4 incoming financial industry disputes, it could be resolved disputes, this is because the disputing parties cannot be summoned, so it is said to be ineffective.

However, BPSK encountered obstacles in implementing its authority, one of which was in the case of the credit agreement that occurred between Saparli and PT. Bank Rakyat Indonesia, the branch office, with the existence of a Financial Services Authority regulation, states that the credit agreement case is a case of default which, if resolved outside the court, is handled by LAPS (Alternative Dispute Resolution Agency) established by OJK (Financial Services Authority) and is not the authority of BPSK. Regarding activities in the economic sector in the banking sector, consumers have quite a lot to complain about such as credit cases, credit guarantee auctions, reduced savings balances, credit cards, debtor information systems (SID), there are still quite a lot of bank consumers who solve legal problems in court and / or in outside the court through BPSK, and file objections to the District Court up to the cassation

level at the Supreme Court. Regarding the decision of BPSK being canceled by the Supreme Court on the basis of the consideration that BPSK is not authorized to examine banking consumer disputes, it has shown that dispute resolution through BPSK has not had legal certainty for banking consumers.

The decision of the Consumer Dispute Resolution Agency, namely DKI Jakarta, Bantul, Tasikmalaya that was not approved by the Business Actors was then submitted to the Bekasi District Court, Yogyakarta, Garut. The District Court Judge overturned the decision of the Consumer Dispute Settlement Agency, on the grounds that BPSK was not authorized to resolve consumer disputes. 4 Regarding the BPSK decision Number 27K / Pdt.Sus / 2013 between Yusmaniar and PT. Adira Dinamika Multi Finance, Tbk. which is used as a reference regarding the cancellation of the BPSK decision needs to be studied further.

This study uses a qualitative normative juridical method. Qualitative normative juridical research is research that refers to legal norms contained in statutory regulations and court decisions as well as norms that live and develop in society.

2 Discussion

In the provisions of Article 54 paragraph (3) UUPK states that the BPSK decision "final and binding" loses meaning and becomes meaningless for consumers who seek justice through BPSK, when confronted with the provisions of Article 56 paragraph (2) where there is an opportunity to file objections in court Country. In the process of filing an objection to the BPSK decision, a problem arose that how the court should treat objections to the BPSK decision. The efforts to object to the District Court were limited to BPSK arbitration decisions. According to Article 48 UUPK states that consumer disputes can be resolved through a judicial process or a non-judicial process based on the agreement of the parties. Article 48 of the UUPK states that dispute resolution through court processes refers to the rules applicable in court with due regard to Article 45 of the UUPK.

In addition, according to paragraph (1), dispute resolution can be carried out outside the court.⁶ Regarding the BPSK decision which was canceled due to legal considerations in the cancellation of the BPSK decision, as in the decision Number 27K / Pdt.Sus / 2013 between Yusmaniar and PT. Adira Dinamika Multi Finance, Tbk. In the consideration that the decision is based on a further relationship between the Plaintiff and the Defendant based on a joint financing agreement with fiduciary transfer of property which applies a civil legal relationship and does not include consumer disputes. According to Shidarta, consumer disputes are disputes relating to violations of consumer rights. Its scope includes all aspects of law both civil, criminal and state administration.

Therefore, the latter seems narrower, covering only civil law aspects. Meanwhile, Az. Nasution argued, consumer disputes are any disputes between consumers and providers of consumer products (consumer goods and / or services) in a legal relationship with each other, regarding certain consumer products. This dispute can involve giving something, doing something, or not doing something as regulated in Article 1233 in conjunction with 1234 of the Civil Code or various combinations of these achievements. The object of consumer disputes in this case is limited to only consumer products, namely goods or services that are generally used for household purposes and not for commercial purposes.⁷

Based on the above considerations, in the opinion of the Supreme Court, there are sufficient reasons to grant the cassation petition from the Cassation Petitioner / Objection

Respondent Mrs. YUSMANIAR and canceled the Solok District Court Decision Number 14 / Pdt.G / 2012 / PN Slk, dated 30 August 2012 and the Supreme Court tried this case itself. and the decision also takes into account the laws and regulations Number 8 of 1999 concerning Consumer Protection, Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment with Law Number 3 of 2009 as well as other relevant laws and regulations.

When statutory regulations never completely and in detail how to fulfill the legal rules in every legal event, therefore jurisprudence will complement it. In addition to filling the legal vacuum, jurisprudence is a legal instrument in order to maintain legal certainty.⁸ Thus illustrating that a definition of consumer affection is needed, this is to provide legal certainty for the disputing parties.

3 Closing

With so many BPSK decisions being cancelled, it is necessary to have a clear definition of consumer disputes, this provides an explanation of how important the definition of consumer disputes is so as to provide legal certainty about which disputes fall under the authority of BPSK or not.

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