

Legal Protection Of Residential Consumers

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ABSTRACT

The purpose of this study is to examine the legal safeguards available to homebuyers. During the process of buying and owning a house, housing customers frequently encounter complicated risks and concerns. For this reason, sufficient legal protection is necessary to safeguard the rights of consumers in real estate transactions. An examination of relevant legal documents and a review of the literature served as the research methodology for this project. Researchers gathered information about the legal protection of homebuyers from a range of legal sources, including statutes, rules, and court rulings. Subsequently, a qualitative analysis is conducted to pinpoint the advantages and disadvantages of the current legal safeguards. The findings of the study demonstrate that despite the existence of several laws and rules protecting housing customers legally, there are still issues and difficulties with their application. Several of the issues.

Keywords:

Legal Protection; Residential Consumers; Consumer Safety

1. Introduction

The issue of consumer protection in various goods and/or service sectors, including in the housing sector, is still an issue that is difficult to resolve effectively and efficiently based on applicable laws and regulations. The need for houses or flats (flats) for all levels of society is one of the basic needs that must be met as well as possible. According to some people, a person's life is not complete if they don't have their own home, even in a simple form. Therefore, it is appropriate that our national policy in the housing sector is contained in the 1993 State Policy Guidelines (GBHN) which states the need to equalize people's needs in the housing sector. {1}

The realization of GBHN's mandate has the consequence that more and more houses will be built, either by the government or the private sector, considering that under normal conditions the demand is increasing. Before the 1997 monetary crisis, public interest in owning a house or flat that was ready to be used or occupied increased. Even though the house or flat is not yet finished, has not even been built or is still in the planning stage, consumers are often heard competing to contact developers to buy a house or flat. {2}

In general, marketing of houses and flats uses advertising or brochures as a means of communicating the products made and/or marketed by developers/entrepreneurs to consumers. Marketing is so tendentious that it is not uncommon for the information conveyed to turn out to be misleading (misleading) or incorrect, even though the consumer has already signed a Binding Sale and Purchase Agreement (PPJB) with the developer or even has a credit agreement with the bank providing credit for the ownership of the house or apartment unit (sarusun). .

For practicality in terms of legal relations between developers and consumers, the party with a stronger position as the developer creates binding standard forms (standard form contracts). In consumer protection practice these forms are referred to as standard contracts. United Nations Resolution No. 39/248 concerning consumer protection calls it a one-side standard contract. In simple terms, it can be said that a standard contract is an agreement or agreement made by the parties regarding something that has been determined by standard (standard) and stated in writing.

Standard contracts often contain exception clauses, for example; eliminating the developer's responsibility in the case of being late in handing over the building, on the other hand, if the consumer is late in paying the down payment installments, he or she will be subject to a penalty or fine; Exempt the developer from claims regarding the condition/quality of the building that exceeds the time limit of 100 days from the handover of the physical building of the house or flat and so on.

In today's digital era, e-commerce has become an option for shopping. Simply by using a smartphone and downloading an application with an internet connection, everyone can shop anywhere and anytime. The types of goods traded are also very diverse. Technology makes it easier for people to access the goods they need. The legal aspects of buying and selling are also experiencing developments. However, these conveniences are not directly proportional to consumer protection. The digital era has not yet accommodated consumer protection, especially in Indonesia. For example, the high number of online loan cases which are currently being reported by consumers.

Fraud using other methods also occurs frequently as an excess of technological developments. Based on these conditions, according to the Chairman of the National Consumer Protection Agency (BPKN), Ardiansyah Parman, the resilience of consumer protection in Indonesia is no longer sufficient to face current and future consumer protection issues. "The situation is actually very vulnerable by looking at several indicators," said Ardiansyah in a press conference held by BPKN in Jakarta, Monday (17/12). These indicators are part of BPKN's year-end notes regarding consumer protection.

Some of the indicators in question are e-digital, BPJS, housing and transportation. First, from the e-digital sector, BPKN noted that until now there is no clarity on access to recovery for e-commerce transactions, recovery systems and institutions. In this context, Ardiansyah said that BPKN estimates that consumer protection incidents related to e-commerce will increase rapidly in the coming year as society's socio-economic life becomes more inclusive with financial technology services. The government needs to regulate this issue for the sake of legal certainty and a path to recovery for consumers.

If not, misuse of technology has the potential to grow uncontrollably, amidst increasingly high cross-border e-commerce traffic. (Also read

Looking at the Role of BPKN-BPSK in Motor Vehicle Credit Disputes) The second indicator is the Social Security Administering Body (BPJS). BPJS experienced a fairly large deficit, estimated at IDR 10.98 trillion. This deficit, continued Ardiansyah, has an impact on the services of medical personnel to people who use BPJS. "BPKN estimates that in 2019 there will be an explosion of incidents involving health services for people who use BPJS," he said. Next, the third indicator is housing.

One example of this is the Violet Garden 2 housing complex in Bekasi. One of the state-owned banks is suspected of maladministrating KPR distribution in Bekasi. Adriansyah stated that the Government continues to improve regulations in the housing transaction sector, both vertical and horizontal housing. However, the party observes that incidents related to housing will increase in 2019. The highest incidents are related to the restoration of consumers' rights to receive certificates for the house/residence unit that is the object of the transaction.

The birth of Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) which was ratified and promulgated on April 20 1999 and became effective on April 20 2000, which regulates, among other things, the existence of consumer dispute resolution institutions outside the court called the Settlement Body. Consumer Disputes (BPSK). The formation of BPSK was motivated by globalization and free trade which is supported by advances in technology and information technology and can expand the space for transportation of goods and/or services across a country's territorial boundaries.

To regulate the BPSK institution, a number of statutory regulations have been issued as follows:

1. Presidential Decree Number 90 of 2001 concerning the Establishment of BPSK
2. Decree of the Minister of Industry and Trade Number: 301/MPP/Kep/10/2001 dated 24 October 2001 concerning the appointment and dismissal of BPSK Members and Secretariat.
3. Decree of the Minister of Industry and Trade Number: 302/MPP/Kep/10/2001 dated 24 October 2001 concerning Registration of Non-Governmental Consumer Protection Institutions.
4. Decree of the Minister of Industry and Trade Number: 350/MPP/Kep/12/2001 dated 10 December 2001 concerning the Duties and Authorities of BPSK.
5. Decree of the Minister of Industry and Trade Number: 605/MPP/Kep/8/2001 dated 29 August 2002 concerning the Appointment of BPSK Members.

In accordance with Article 45 of the UUPK, it is known that parties to a dispute are given the right to choose which institution or body they will choose to resolve the problems they face, either through court or outside court.

Resolving consumer disputes outside of court is carried out in an institution established based on Article 49 paragraph (1) UUPK, namely that the government forms BPSK in Level II Regions to resolve consumer disputes outside of court.

Based on the background explained above, the problem that can be resolved from this research is the role of the Consumer Dispute Resolution Agency (BPSK) in resolving consumer disputes.

2. Methods

The research method used in the "Legal Protection of Housing Consumers" research is literature study and analysis of related legal documents. The literature study was carried out by collecting data from various relevant legal sources, such as laws, regulations and court decisions related to the legal protection of housing consumers. These sources are accessed through libraries, legal databases, scientific journals, and other sources of legal information. The collected data was then analyzed qualitatively. Analysis is carried out by reading and understanding the contents of legal documents related to housing consumer protection. Researchers identify weaknesses and strengths in existing legal protections, and analyze the effectiveness of their implementation. Apart from that, in this research method a comparative analysis is also carried out between various laws and regulations that apply in various countries or regions that have good legal protection for housing consumers. This aims to compare policies and best practices that can serve as a reference for improving the legal protection of housing consumers in the research area. From the research method implemented, a comprehensive understanding of the existing legal framework, weaknesses that need to be corrected, as well as recommendations for improvements that can be provided in order to increase legal protection for housing consumers is produced.

3. Results and Discussion

About The Consumer Dispute Resolution Board (BPSK)

The UUPK does not provide limitations on what is meant by a consumer dispute. There are several key words to understand the meaning of "consumer dispute" within the UUPK framework. What is meant by consumer dispute is a dispute between business actors and consumers. According to article 1 point 2 of the UUPK, it is stated that: "A consumer is every person who uses goods and/or which are available in society, whether for the benefit of themselves, their family, other people or other living creatures and not for trading. "According to Article 1 point 3 of the UUPK, it is stated that: "a business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity, which is established and domiciled or carries out activities within the jurisdiction of the State of Indonesia, either alone or jointly. through agreements to carry out business activities in various economic fields". In this case, what is meant by forms of consumer disputes are disputes that generally occur frequently in people's lives, namely in the categories:

1. Goods, namely every object, whether tangible or intangible, movable or immovable, expendable or non-expendable, which can be traded, worn, utilized or utilized by consumers.
2. Services, namely any service in the form of work or achievements provided to the community for consumers to benefit from.

Consumer dispute resolution institutions already exist and were established by the government with Presidential Decree Number 90 of 2001 concerning the Establishment of Consumer Dispute Resolution Bodies (BPSK) in the city governments of Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Malang and Makassar . To be precise, only 10 (ten) cities initially established consumer dispute resolution institutions, which were then called BPSK,

which functioned to assist the community in resolving consumer disputes between consumers and business actors. The institution formed by the government is a non-governmental organization or called a Non-Governmental Consumer Protection Agency, which is a non-governmental organization registered and recognized by the government which has activities dealing with consumer protection.

According to Article 1 number 11 of the UUPK, it is stated that: "The Consumer Dispute Resolution Agency (BPSK) is the body tasked with handling and resolving disputes between business actors and consumers". BPSK is a special institution formed and regulated in the UUPK, whose main task is to resolve disputes or disputes between consumers and business actors.

If we look at the provisions of Article 23 UUPK, it says that in the event that a manufacturing business actor and/or a distributor business actor refuses and/or does not respond and/or does not fulfill compensation for consumer demands, then they are given the right to sue the business actor and resolve the dispute. arising through BPSK or by filing a lawsuit with the judiciary at the consumer's location. Here we can see there are 2 (Two) important things, namely:

1. That the UUPK provides alternative solutions through bodies outside the justice system called BPSK, apart from through district courts whose jurisdiction includes the consumer's domicile.
2. That the choice of resolving consumer disputes with business actors is not an executive choice, which cannot or must not be chosen. The option of resolving disputes through BPSK is parallel to the option of resolving disputes through judicial bodies.

Regulations that support the existence of BPSK include:

1. Law Number 8 of 1999 concerning Consumer Protection.
2. Government Regulation Number 57 of 2001 concerning BPKN.
3. Government REGULATION Number 58 of 2001 concerning Development and Supervision of the Implementation of Consumer Protection.
4. Government Regulation Number 59 of 2001 concerning LPKSM.
5. Presidential Decree Number 90 of 2001 concerning the formation of BPSK.
6. Decree of the Minister of Industry and Trade Number: 301/MPP/Kep/10/2001 dated 24 October 2001 concerning the Appointment and Dismissal of BPSK Members and Secretariat.
7. Decree of the Minister of Industry and Trade Number: 302/MPP/Kep/10/2001 dated 24 October 2001 concerning Registration of non-governmental consumer protection institutions.
8. Decree of the Minister of Industry and Trade Number: 350/MPP/Kep/12/2001 dated 10 December 2001 concerning the Duties and Authorities of BPSK.
9. Decree of the Minister of Industry and Trade Number: 605/MPP/Kep/8/2002 dated 29 August 2002 concerning the Appointment of BPSK Members.

The establishment of BPSK is a form of developing problems related to disputes in the field of consumer protection. BPSK is not just an institution or body that can be established or formed by individuals, but an institution that has a legal umbrella and is based on fairly clear statutory regulations. UUPK regulates the formation of BPSK which is emphasized in Article 49 paragraph (1), which reads: "the government establishes consumer dispute resolution bodies in Level II Regions to resolve consumer disputes outside of court".

Alternative Dispute Resolution Methods

Alternative dispute resolution when viewed based on the word "alternative" shows that alternative means that the parties to the dispute are free through mutual agreement to choose the forms and procedures contained in the alternative dispute resolution and will apply it to the resolution of the dispute. So that alternative dispute resolution can be defined as a set of procedures or mechanisms that function to provide alternatives or choices for dispute procedures through alternative forms of dispute resolution in order to obtain a final decision and be binding on the parties.

Further development along with the development of alternative dispute resolution development can also be interpreted as the efforts of mediators and arbitrators to explore, discover, create alternative dispute resolution or arbitration outside of court that is practical, efficient, fast, cheap and simple in dealing with and entering free trade, free markets, competition. freely within one world economic region.

Alternative Dispute Resolution can occur if there is a dispute between consumers and business actors when both need each other for goods and/or services. Alternative dispute resolution institutions are basically a form of dispute resolution outside of court, which is based on the agreement of the parties to the dispute. As a consequence of the agreement between the parties to the dispute, alternative dispute resolution is voluntary and therefore cannot be forced by one party on the other party to the dispute. However, as an agreement (alternative dispute resolution), the agreement reached by the parties to resolve the dispute through a forum outside of court must be adhered to by the parties. To what extent is the agreement to resolve disputes outside of court binding in the positive legal system that applies universally to all applicable legal rules.

Disputes can be interpreted as promises or statements about various uses, capabilities or advantages of the product, whether they are true or just an attempt by the business actor concerned to attract customers in order to have an impact on the business actor's relationship with consumers. When the promises offered or the advantages touted are not proven, negative impacts will arise both within the company concerned and consumers. The form of consumer reaction initially starts from complaining and throwing away the goods they have purchased, telling about their misfortune to the business actor concerned and if ignored, complaining to the relevant authorities or various community organizations and/or incidents of consumer reaction as described above can be interpreted as consumer disputes.

In general, alternative methods for resolving disputes that can be used by consumers and business actors include:

1. Consultation;
2. Negotiation;
3. Conciliation;
4. Mediation;
5. Arbitration; And
6. Expert Assessment.

The meaning of each of the alternative dispute resolution methods, namely:

1. Consultation is an exchange of ideas to get the best possible conclusions to get advice, suggestions, research, assessments from experts in their respective fields.
2. Negotiation is a bargaining process by negotiating to reach a mutual agreement between the disputing parties peacefully through negotiations between the disputing parties.
3. Conciliation is the process of resolving disputes outside of court through an alternative dispute resolution body to determine the parties in dispute and the resolution is left to the parties. Cooperative decision making is a procedure where the parties take their own initiative without the help of a third party, including conciliation, which is useful for building positive social relationships, increasing mutual trust and offering mutual openness.
4. Mediation is the process of resolving disputes outside of court through an alternative dispute resolution body as a counselor and the resolution is left to the parties.

In general, the mediation process is divided into 5 (five) stages, namely as follows:

- a. Agree to take the mediation process;
 - b. Understand the problems;
 - c. Generating problem solving options;
 - d. Reach an agreement;
 - e. Implementing agreements;
5. Arbitration is a dispute resolution process outside of court in which the disputing parties submit the dispute resolution completely to an alternative dispute resolution body.
 6. Expert judgment is a strong opinion as a legal basis that is binding and fulfills a sense of justice, truth, propriety and reasonableness in accordance with the results of the agreement between the parties to the dispute.

Consumer Dispute Resolution Process.

The Consumer Dispute Resolution Body (BPSK), each element consisting of 3 (three) members, while administratively led by the head of the BPSK Secretariat with 4 (four) other secretariat members; the head of the secretariat is a member of the government.

To become a BPSK member you must meet the following requirements:

1. Indonesian Citizen (WNI)
2. Healthy;
3. Be well behaved;
4. Never been convicted of a crime;
5. Have knowledge and experience in the field of consumer protection;
6. At least 30 (thirty) years of age.

The appointment of the secretariat and members of BPSK is determined by the Minister with a minimum number of members of 3 (three) people and a maximum of 5 (five) people.

In the legislation, namely UUPK and Decree of the Minister of Industry and Trade number: 350/MPP/Kep/12/2001 dated 10 December 2001 concerning the Duties and Authorities of BPSK, the duties and authorities of BPSK are not explained separately.

The duties and authorities of BPSK in carrying out its function as a body that handles and resolves consumer disputes outside of court are as follows:

- a. Carry out handling and resolution of consumer disputes by means of conciliation, mediation and arbitration;
- b. Providing consumer protection consultation;
- c. Supervise the inclusion of standard clauses;
- d. Report to the general investigator if a violation of the UUPK occurs;
- e. Receive complaints, both written and unwritten, from consumers regarding violations of consumer protection;
- f. Conduct research and examination of consumer protection disputes;
- g. Summoning business actors suspected of having committed violations of consumer protection;
- h. Summon and present witnesses, expert witnesses and/or anyone deemed to have knowledge of violations of the UUPK;
- i. Request assistance from investigators to present business actors, witnesses, expert witnesses or any person as referred to in points (g) and (h) who is unwilling to comply with BPSK's summons;
- j. Obtain, examine and/or assess letters, documents or other evidence for investigation and/or examination;
- k. Decide and determine whether or not there is any loss on the part of the consumer;
- l. Notify decisions to business actors who violate consumer protection;
- m. Imposing administrative witnesses to business actors who violate UUPK provisions.

The process for resolving consumer disputes is as follows:

1. Application stages from the applicant, namely the consumer as plaintiff;
2. Pre-trial stages, namely selecting a settlement method;
3. Dispute resolution based on decisions of the parties, especially mediation, conciliation, arbitration and panel decisions.

Based on these stages, it can be explained in more detail according to the process at BPSK, as follows:

1. Stages of the applicant's application.
 - a. Applications are made by the applicant, namely consumer requests addressed to the secretariat by reporting through complaints,
 - b. Day I (first), after the BPSK Secretariat has received clear information regarding the dispute being complained of, the secretariat will create a dispute file (which is a chronology of the problems that occurred) and the applicant will obtain a receipt and registration number from the BPSK Secretariat;
 - c. Day II (second), then the BPSK Secretariat checks the administrative completeness of the application;
 - d. For further information, the BPSK secretariat submits the application which is then reported to the Chair of the BPSK;
 - e. The dispute file (applicant's application) is submitted to the Chairman of BPSK;
 - f. Day III (third), the Chairman of BPSK checks the materials or files;
 - g. Then the Chairman of BPSK will hold a meeting of BPSK members to decide whether the application can be accepted or rejected;

- h. When the application is received, the Chairman of the BPSK then appoints a clerk.

When the application is declared accepted, the summons to the business actor is immediately carried out on the same day, but sometimes also the day after the dispute is declared accepted considering that there are other disputes that have been submitted to BPSK which also require a decision whether BPSK accepts or rejects them. After the Chairman of the BPSK appoints a clerk, what the Chairman of the BPSK then carries out is the pre-trial stage.

2. Pre-trial stages.

- a. The Chairman of the BPSK conducts a pre-hearing by summoning business actors, and the summons is carried out by the clerk on behalf of the Chairman of the BPSK;
- b. The Chairman of the BPSK summons the business actor in writing accompanied by a copy of the request for consumer dispute resolution (in the summons the day, date, time and place of the trial are clearly stated as well as the business actor's obligation to provide a letter of response to the consumer dispute resolution and submitted on the day of the first trial);
When business actors are summoned, it is sometimes not uncommon for business actors not to immediately respond to the call from BPSK, so that BPSK has to re-summon business actors and sometimes up to 3 (three) calls. Meanwhile for the summons time, the time interval is 3 (three) days. from the previous call. However, for BPSK, delays in business actors or their presence with repeated calls are also the rights of business actors. If the BPSK summons is still not carried out, then BPSK asks for assistance from the General Investigator.
- c. Then the defendant and plaintiff can meet members and/or secretariat and/or Chair of BPSK to get an explanation from BPSK regarding how to resolve disputes at BPSK. Then the parties are expected to be able to choose one of the dispute resolution methods available at BPSK, namely whether
- d. dispute resolution through mediation, conciliation and arbitration.

1. Types of Disputes at BPSK.

The types of disputes that exist in BPSK can be grouped into several types of disputes, namely:

a. Goods dispute.

Disputes referred to in the category of purchasing goods are:

- 1) Food and drink;
- 2) Subscription to a newspaper;
- 3) Jewelry;
- 4) Electronics;

b. Service disputes.

Disputes referred to in the service utilization category are:

- 1) Insurance;
- 2) Banking (finance);
- 3) Purchasing a house (through property);
- 4) Motor vehicle credit (leasing);
- 5) Public transportation;
- 6) Parking;
- 7) Telecommunications;

- 8) Electricity;
- 9) Water/PDAM;
- 10) Credit card services.

4. Conlusion

Very rapid economic development has produced many kinds of goods and/or services which are consumed by consumers, namely society. The development of science and technology has resulted in many various products being verified and the existence of these goods and/or services has also crossed the territory of a country, resulting in expanding the space for the flow of transactions for goods and/or services in question.

This situation provides benefits to consumers because the need for desired goods and/or services is immediately fulfilled and the freedom to choose various types and qualities of goods and/or services according to the consumer's desires and abilities is opened. This phenomenon factually causes problems, namely the unequal position of business actors who want to obtain maximum profits and various losses experienced by consumers.

A consumer dispute resolution institution already exists and was established by the government with Presidential Decree Number 90 of 2001 concerning the Establishment of a Consumer Dispute Resolution Agency (BPSK) which functions to assist the public in resolving consumer disputes between consumers and business actors. BPSK is a special institution formed and regulated in the UUPK, whose main task is to resolve disputes or disputes between consumers and business actors.

The establishment of BPSK is a form of developing problems related to disputes in the field of consumer protection. BPSK is not just an institution or body that can be established or formed by individuals, but an institution that has a legal umbrella and is based on fairly clear statutory regulations. UUPK regulates the formation of BPSK which is emphasized in Article 49 paragraph (1), which reads: "the government establishes consumer dispute resolution bodies in Level II Regions to resolve consumer disputes outside of court".

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