

AUTHORITY OF *BADAN PENYELESAIAN SENGKETA KONSUMEN* RESOLVING DEFAULT DISPUTES IN CONSUMER FINANCING

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Article	Abstract
<p>Article History: Submitted: September 2023 Reviewed: March 2024 Accepted: October 2024 Published: October 2024</p> <p>Keywords: Authority; BPSK; Breach of Contract; Consumer Financing; Supreme Court.</p>	<p><i>This research aims to explore and study the cause of different perspective between Badan Penyelesaian Sengketa Konsumen (BPSK) and Supreme Court, regarding the authority of BPSK in Resolving Breach of Contract Disputes in Consumer Financing, as well as to examine the boundaries of BPSK in resolving Breach of Contract disputes in consumer financing in order to achieve the legal certainty. This research is a normative research which use constitutive approach and conceptual approach. The data collection method is using literature review and interview. The primary legal materials and secondary legal materials are analyzed by descriptive qualitative to answer the legal matters which being studied. The logic of deductive is used to draw conclusion. The result of this research is there are some factors which causes different perspective between BPSK and Hakim Agung; BPSK still believes that the Breach of Contract dispute in consumer financing is their authority, the blurry criteria of disputes which are the authority of BPSK and the absence of limitative boundaries to BPSK authority towards Consumers Protection Law. The limitations of BPSK's authority is they need to clarified the definition of consumer's disputes as Breach of Contract disputes is included in BPSK's authority. The disputes handled by BPSK should have minor loss, and if a place of dispute resolution in BPSK's court already in the agreement of consumer financing, BPSK must reject it.</i></p>

A. Introduction

As time goes by, the advance and the development of economy both in the fields of industry and national trade have produced various variations of goods/services that can be consumed by consumers. Having a choice of various types of goods/services is certainly beneficial for consumers because consumers can freely choose goods/services that suit their needs and abilities. On the other hand, this phenomenon causes the position of business actors and consumers to become unbalanced and in this case, consumers are in a weak position. Consumers often become objects for business actors to reap maximum profits through promotional activities, sales methods, and the implementation of standard agreements that are detrimental to consumers.

In financing industry, The Financial Services Authority (*OJK*) revealed that the behavior of billing officers or debt collectors in the finance company industry (leasing) was the highest type of consumer complaint throughout 2023. Based on the Roadmap for Development and

Strengthening of Financing Companies 2024–2028, complaints about the behavior of collection officers were among the highest complaints that consumers submit to regulators. “In 2023, there will be 4,528 complaints [related to leasing].” Where, the highest type of complaint was 23.39% related to the behavior of billing officers,” said *OJK* in the Roadmap for Development and Strengthening of Financing Companies 2024–2028. *OJK* said that the 23.39% figure was equivalent to 1,055 consumer complaints regarding debt collector leasing behavior last year. The second highest number of complaints was related to the financial information service system, namely 23.01% or 1,042 complaints.¹

Consumers who are harmed by business actors need a legal umbrella to protect and guarantee their rights, so a regulation was formed as a legal basis to protect consumers, namely Law Number 8 of 1999 concerning Consumer Protection. The reason for the issuance of the Consumer Protection Law is that consumers need a separate regulation, because in a legal relationship between consumers and business actors, consumers are users of goods and services for their own purposes and not for trading or production and consumers need separate legal means or procedures to protect their rights². The Consumer Protection Law is expected to be able to provide guarantees of protection and legal certainty for consumers who experience losses due to unfair trading practices in goods/services. Consumer protection has a broad scope, including consumer protection for goods and services, starting from the activity stage to obtain goods and services to the consequences of using the goods or services.³ In Article 45 of the Consumer Protection Law, it is explained that if a consumer is harmed by a business actor, s/he can sue the business actor either through the court or outside the court based on the voluntary choice of the consumer and the business actor.

Dispute resolution through the court refers to the provisions regarding general justice, while dispute resolution outside the court will be handled by the *BPSK*, hereinafter abbreviated as *BPSK*. *BPSK* according to Article 1 number 11 of the Consumer Protection Law is a body tasked with handling and settlement of disputes between business actors and consumers.

Through *BPSK*, consumer dispute settlement will be settled using conciliation, mediation or arbitration mechanisms according to the agreement of the disputing parties.⁴ Out-of-court consumer dispute settlement through *BPSK* is held to reach an agreement regarding the form

¹ Rika Anggraeni, “OJK: Perilaku Debt Collector Leasing jadi Pengaduan Tertinggi pada 2023”, March 13, 2024, <https://finansial.bisnis.com/read/20240313/89/1748875/ojk-perilaku-debt-collector-leasing-jadi-pengaduan-tertinggi-pada-2023>, accessed on 4 October 2024.

² Abdul Halim, *Hak-hak Konsumen* (Bandung: Penerbit Nusa Media, 2019), 2-3.

³ Rosmawati, *Pokok-Pokok Hukum Perlindungan Konsumen* (Depok: Prenamedia Group, 2018), 8.

⁴ Maryanto, *Prosedur Penyelesaian Sengketa Konsumen di BPSK* (Semarang: Unissula Press, 2019), 10.

and amount of compensation and/or certain actions to ensure that losses experienced by consumers do not recur or will not happen again. Apart from that, it can encourage business actors to carry out business activities with a sense of responsibility.⁵

Since its formation, *BPSK* has handled various consumer disputes in the goods/services sector. One of the consumer disputes in the services sector that *BPSK* often handles is disputes over default in consumer finance. Disputes regarding default on consumer finance handled by *BPSK* are generally disputes related to vehicle installment. In 2015, Chairman of *BPSK* Yogyakarta at the time, Suyana, explained that leasing consumers still occupy the top ranking of reports submitted to *BPSK*. “Last year there were around 40 cases reported” he said.⁶ In 2023, *BPSK* Pematangsiantar receives various complaints related to problems when consumers experience losses. Head of the *BPSK* Pematangsiantar Secretariat, Yanti Hutabarat, said that consumer disputes in Pematangsiantar City and Simalungun Regency are dominated by bad credit financing related to motorized vehicles, so that cases often lead to disputes between consumers and financing or leasing companies.⁷

In general, these cases occur because of a default by the consumer because s/he did not pay the installment within the time limit agreed in the finance agreement. Initially, the finance company sent a summon to consumer demanding compensation, but there was no follow-up from the consumer.⁸ The finance company then forcibly withdrew the vehicle from the consumer which was the object of the fiduciary guarantee.

In 2020 after the issuance of Constitutional Court Decision No. 18/PUU-XVII/2019, leasing or finance companies cannot forcibly withdraw vehicles from debtors/consumers. Withdrawal of a vehicle can only be carried out if the finance company submits a request for execution to the district court to withdraw the vehicle which is the object of a fiduciary guarantee or is carried out without an application to the district court if the consumer admits that there is a breach of promise or default. Feeling aggrieved by the forced withdrawal of vehicle, consumer then complained of the dispute to *BPSK*. In the finance agreement, generally there is a clause regarding the place of settlement if a dispute occurs which is agreed upon by the parties, however the party who feels aggrieved, namely the consumer, tends to choose a

⁵ Rahmi Rimanda, “The Existence of the Consumer Dispute Resolution Agency (*BPSK*) as a Quasi Judicial Institution in Indonesia”, *Jurnal Bina Mulia Hukum* 4, no. 1 (September, 2019): 17-34, 10.23920/jbmh.v4n1.2.

⁶ Radar Jogja, “Leasing Tertinggi Terlapor di *BPSK*”, April 18, 2015, <https://radarjogja.jawapos.com/jogja/65713444/leasing-tertinggi-terlapor-di-BPSK>, accessed on 4 October 2024.

⁷ Anita Sinuhaji, “Sengketa Pembiayaan dan Perumahan Paling Banyak Ditangani *BPSK* Pematangsiantar”, September 8, 2024, <https://mistar.id/siantar/sengketa-pembiayaan-dan-perumahan-paling-banyak-ditangani-BPSK-pematangsiantar/>, accessed on 4 October 2024.

⁸ Salim H. S, *Hukum Kontrak Teori & Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2019), 99.

non-litigation route in settling the dispute.⁹ Even though the Financial Services Authority has also optimized the existence of an Alternative Agencies for Dispute Resolution in Financial Services Sector (*LAPS-SJK*) which more specifically handles disputes in the financial services sector, *BPSK* is still an option for consumers to settle their disputes. This is because the Consumer Protection Law does not clearly define the criteria for consumer disputes which are not within the authority of *BPSK*.¹⁰

The provisions of Article 56 of the Consumer Protection Law provide an opportunity for parties who object to the *BPSK* decision to submit an objection to the district court. With these provisions, it is not uncommon for disputes between consumers and finance companies handled by *BPSK* to reach the court. Problems arise when the dispute that has been decided by *BPSK*, an objection has been submitted to the district court and has reached the cassation stage. Often the Supreme Court annuls *BPSK* decisions regarding default disputes. In 2017, as quoted by detik.com¹¹, The Supreme Court annulled 127 *BPSK* decisions in which the majority of consumers sued banks, insurance companies, and one of them was a finance company. The reason the Supreme Court annulled hundreds of *BPSK* decisions was because *BPSK* had judged outside its authority, namely adjudicating default disputes which were then upheld in the district court.

There are two examples of cases, namely the Supreme Court Decision No. 1112 K/Pdt.Sus-BPSK/2021 and Supreme Court Decision No. 869 K/Pdt.Sus-BPSK/2019. In these two examples, there is the same problem where consumers were in arrears on installments on vehicle so that the finance companies forcibly withdrew the vehicle from the consumers' hands. Initially, the dispute was handled by arbitration at *BPSK* and the finance company submitted an objection to the district court because it objected to the *BPSK* arbitration decision. The district court then upheld *BPSK*'s decision and rejected the objection from the finance company. Feeling unsatisfied, the finance company then filed an appeal at the Supreme Court. In these two decisions, the Supreme Court annulled *BPSK*'s decision with the same consideration, namely that *BPSK* had exceeded its authority, namely by adjudicating default disputes on consumer finance. The Supreme Court considers that the relationship between the parties is

⁹ M. Afrizal, *et.al.*, "Analisis Yuridis Kewenangan Penyelesaian Sengketa Pembiayaan Konsumen Di Indonesia", *Jurnal Magister Ilmu Hukum Universitas Brawijaya* 27, no. 1 (July 22, 2019): 41-53, <https://ejournal.umm.ac.id/index.php/legality/article/view/8957>.

¹⁰ Haerani, "Kewenangan Badan Penyelesaian Sengketa Konsumen Dalam Menangani Sengketa Pada Sektor Jasa Keuangan Setelah Terbentuknya Lembaga Alternatif Penyelesaian Sengketa (LAPS)", *Jurnal Unizar Law Review* 4, no. 2 (December 29, 2021): 146-158, <http://dx.doi.org/10.53726/ulr.v4i2.464>.

¹¹ Andi Saputra, "Tok! 127 Keputusan Sengketa Konsumen Dianulir MA", October 4, 2017, <https://news.detik.com/berita/d-3669668/tok-127-keputusan-sengketa-konsumen-dianulir-ma>. accessed on 4 October 2024.

bound by a finance agreement where the dispute that occurred was initiated by a breach of contract committed by the consumer, therefore the dispute is not a consumer dispute but an ordinary civil dispute which is the authority of the district court.

Differences in views between *BPSK* and Supreme Court judges have caused confusion and legal uncertainty regarding *BPSK*'s authority in settling the consumer disputes caused by default, especially those that occur in consumer finance. Consumers' efforts to settle their disputes with finance companies at *BPSK* are in vain because there are no definite provisions regarding the limits of *BPSK*'s authority, so that *BPSK* decisions tend to be overturned in the courts, especially in the Supreme Court. Due to the existence of such reasons as uncertainty regarding *BPSK*'s authority as well as previous research which discusses *BPSK*'s authority to settle consumer disputes in the financial services sector after the formation of LAPS-SJK, the author will complete the research in the scope of consumer dispute settlement through *BPSK* which is specifically researching the authority of *BPSK* in the settlement of default disputes in consumer finance in order to create legal certainty for consumers and finance companies in the future. The problem formulation in this research are (1) differences in views between the Consumer Dispute Resolution Agency and the Supreme Court regarding the authority to settle the default disputes in consumer finance, and (2) the limits of *BPSK*'s authority in the future in adjudicating default disputes on consumer finance to create legal certainty

B. Method

The type of research used is normative legal research which is a scientific research procedure to find the truth based on scientific logic from the normative side. This type of normative legal research focuses on statutory regulations relating to the authority of *BPSK* in the settlement of default disputes in consumer finance. The data analysis technique in this research was carried out descriptively qualitatively on legal materials by interpreting and/or comparing to find the reasons for the differences in views of *BPSK* and the Supreme Court as well as future arrangements that can provide certainty regarding the limits of *BPSK*'s authority in settling disputes of default on consumer finance.

C. Analysis and Discussion

1. Differences in Views Between *BPSK* and the Supreme Court Regarding the Authority to Settle the Default Disputes in Consumer Finance

BPSK is an independent state organ or state auxiliary organ which has the authority to carry out enforcement in the field of consumer protection law. State auxiliary organ can be

interpreted as state organ that is formed outside the constitution and is auxiliary organ in carrying out the duties of the main state organs (executive, legislative, and judicial) which are then often also called quasi independent (quasi) state organ. Quasi-organ carries out authority that actually already exists, but because of public distrust of the executive, it is deemed necessary to create an organ that is independent, in the sense that it is not part of the three pillars of power. Quasi organ is usually formed in branches of power sectors such as the executive (quasi public) and the judiciary (quasi judicial) whose function is to supervise state organs in the same sector or take over some of the authority of state organs in the same sector. *BPSK* is an auxiliary organ in the quasi-judicial field where the tasks and authority given are actually the duties of the judicial organ.

BPSK's position as a quasi organ can be seen in Article 23 of the Consumer Protection Law¹² which determines:

Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as intended in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through *BPSK* or submit it to the judicial organ in the consumer's domicile.

From these provisions it can be concluded that settling disputes between consumers and business actors is not an executive choice, which does not have to be chosen. The option to settle consumer disputes through *BPSK* is parallel to the option to settle consumer disputes through court. Therefore, in principle, *BPSK* has competence and authority that must be recognized and respected by other institutions to settle consumer disputes. As previously stated, the aim of establishing *BPSK* is to protect business actors and consumers by providing open information and legal certainty. With the existence of *BPSK*, it is hoped that it will become a means of equal distribution of justice, especially for consumers who have been aggrieved by business actors.¹³

In consumer finance, there are four important things, namely consumer finance is an alternative finance for consumers, the object of finance is consumer goods, a periodic payment system, and a flexible repayment period.¹⁴ When receiving and settling default disputes on consumer finance, *BPSK* Yogyakarta Staff, namely Mrs. Yudith Nitriasari expressed several considerations¹⁵. Firstly, in principle, as mandated by the Consumer

¹² Central Government Indonesia, "Law No. 8 of 1999 Regarding Consumer Protection" (1999).

¹³ V. Zahry and S. Bambang, *Penegakan Hak Konsumen Melalui Badan Penyelesaian Sengketa Konsumen Guna Meningkatkan Indeks Kepuasan Konsumen* (Surabaya: CV. Jakad Media Publishing, 2021), 90.

¹⁴ Wihelmus Renyaan, *Tanggung Jawab Debitor Dalam Perjanjian Pembiayaan Barang Apabila Terjadi Wanprestasi* (Pasaman Barat: Azka Pustaka, 2022), 2.

¹⁵ Interview conducted on 22 November 2022.

Protection Law, *BPSK* is not permitted to reject consumer complaints regarding losses they have experienced, unless the consumer making the complaint is an intermediate consumer, not a final consumer. Therefore, *BPSK* Yogyakarta continues to receive and handle consumer complaints as long as they comply with the consumer dispute criteria as regulated in the Consumer Protection Law where consumers who demand compensation for damage, pollution, and/or suffering loss as a result of consuming goods and/or using their services produced or traded. The second is related to default disputes, Mrs. Yudith Nitriasari¹⁶ gave the opinion that there are two types of default disputes, namely pure civil default dispute which does not contain elements of consumer protection and default dispute which contains elements of consumer protection where there are consumers who are aggrieved.

Based on the Consumer Protection Law, *BPSK* Yogyakarta only accepts default disputes that contain elements of consumer protection. On this basis, Mrs. Yudith Nitriasari¹⁷ is of the opinion that it cannot simply be generalized that all breach of contract disputes are pure civil disputes that do not contain any element of consumer protection as is done by the Supreme Court. Standard contract is the main factor causing consumer disputes due to limited consumer knowledge which causes the position of business actors to be more “superior” than consumers. There are 4 types of conditions in breach of contract, namely no fulfilling performance, being late in fulfilling performance, fulfilling performance but not appropriate, and doing something that according to the agreement should not be done.¹⁸ Thirdly, when it has been determined that the dispute resolution clause in the finance agreement will be settled in the district court, *BPSK* still accepts and settles the dispute. The consideration is that reporting consumer disputes to *BPSK* is the right of consumers who experience losses due to the actions of business actors based on Article 4 of the Consumer Protection Law.

The choice of *BPSK* as a place for dispute settlement also needs to be agreed upon by business actors. Often there are business actors who do not agree to settle their disputes at *BPSK* Yogyakarta because business actors think that disputes that occur must be settled in court as specified in the finance agreement. To handle this matter, *BPSK* Yogyakarta will usually summon business actors to the *BPSK* office to be given an approach and explanation regarding the dispute settlement mechanism at *BPSK* which is simpler than having to go to

¹⁶ Interview conducted on 22 November 2022.

¹⁷ Interview conducted on 22 November 2022.

¹⁸ Sudjana, “Akibat Hukum Wanprestasi Dan Tanggung Jawab Para Pihak Dalam Transaksi Anjak Piutang”, *Jurnal Fakultas Hukum Universitas Padjajaran* 5, no. 2 (December 27, 2019): 374-398, 10.25123/vej.3173.

court and making dispute complaint to *BPSK* is one of the consumer rights that must be recognized.

Fourth, *BPSK* is aware of *BPSK*'s perceived lack of authority to settle default disputes on consumer finance not only come from the Supreme Court, but also from the Financial Services Authority. As stated by Mrs. Yudith Nitriasari¹⁹, with the presence of *LAPS-SJK*, *OJK* believes that consumers who are aggrieved in the financial services sector should report their complaints to *LAPS-SJK*, not to *BPSK*. However, for now, to overcome the confusion and lack of clarity that has occurred, *BPSK* Yogyakarta is coordinating with *OJK* Yogyakarta in the form of monitoring and handling consumer disputes and conducted forum group discussion.

The Supreme Court's view regarding the authority to settle default disputes in consumer finance is different from *BPSK*'s beliefs. In the Supreme Court Jurisprudence Number 1/Yur/Perkons/2018, there are several considerations of the Supreme Court justices from the decisions cited to strengthen the Supreme Court's belief that *BPSK* has no authority to adjudicate disputes based on consumer finance agreements:

- a. Decision Number 27 K/Pdt.Sus/2013 dated 23 March 2013 (Mrs. Yusmaniar vs PT Adira Dinamika Multi Finance Tbk.). The Supreme Judge stated “The legal relationship between the Plaintiff and the Defendant is apparently based on a joint finance agreement with a fiduciary transfer of property, which applies civil legal relations and does not include consumer disputes, as intended in the provisions of Law Number 8 of 1999 regarding Consumer Protection, therefore the Padang Consumer Dispute Resolution Agency has no authority to adjudicate it.
- b. Decision Number 306 K/Pdt.Sus/2013 dated 26 August 2013 (Zuraidah vs PT. Adira Dinamika Multi Finance, Tbk). The Chief Justice stated:
 - 1) That in accordance with the petitem of the objection respondent's complaint to the *BPSK* Deli Tebing Tinggi, the a quo case is a case regarding a broken promise made by the objection applicant because he did not hand over the BPKB for 1 unit of motorbike which had been paid in stages by the objection respondent, so it is not a consumer dispute as intended in the provisions of Article 1 number 8 of the Minister of Trade Decree No. 350 /MPP/Kep/12/2001;
 - 2) Whereas apart from that, the Objection Respondent is not a consumer as intended in the provisions of Article 1 number 2 of Minister of Trade Decree No. No. 350/MPP/Kep/12/2001, so that the Objection Respondent or Plaintiff at the Consumer Dispute Resolution Agency level should file a civil lawsuit (broken promise) through the District Court.

¹⁹ Interview conducted on 22 November 2022.

It can be concluded that the Supreme Court believes that default disputes in consumer finance are civil disputes and therefore are subject to Indonesian Civil Law. The Supreme Court emphasized the cause of the dispute, namely because one of the parties broke their promise. In the consideration, The Supreme Court also did not base the legal facts on the Consumer Protection Law. The implementation of consumer finance agreements, one of which is subject to the provisions of the Civil Code, in particular Article 1338 of the Civil Code which determines: “All agreements made are in accordance with the applicable law as law for those who make it. This consent cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreements shall be implemented in good faith.”

Based on information obtained from a civil law lecturer, Faculty of Law, Universitas Atma Jaya Yogyakarta, Mrs. Y. Sarimurti Widiyastuti²⁰, in principle, default disputes do not have absolute authority for the district court to handle and adjudicate the case. In a breach of contract dispute, the parties are always bound by an agreement where the parties are bound by the rights and obligations contained therein. If the parties have appointed *BPSK* as the place for resolving their dispute, *BPSK* has the authority to adjudicate the dispute. This is related to the principle of freedom of contract for the parties. However, if the designated place for dispute resolution is the district court, then *BPSK* should refuse to adjudicate. The Consumer Protection Law stipulates that business actors are required to act in good faith when carrying out their business activities, while consumers are required to act in good faith when carrying out transactions to purchase goods and/or services.²¹

Mrs. Sarimurti²² gave reasons for this. In its duties and authorities as stipulated in the Consumer Protection Law, when a consumer complains about a dispute with a finance company, *BPSK* must first examine the agreement which is the source of the legal relationship between the parties. When it has been determined that the place for dispute resolution is the district court, *BPSK* must refuse to adjudicate the dispute. However, to maintain consumer rights, *BPSK* can provide education that an agreement must be executed by the parties in good faith. *BPSK*'s main task is not only to settle and adjudicate consumer disputes, but also to provide education for consumers. It should also be noted that business actors also have rights that they are also fighting for.

²⁰ Interview conducted on 26 April 2023.

²¹ Celina Tri Siwi, “Perlindungan Konsumen di Masa Pandemi Covid-19 Sebagai Wujud Pemenuhan HAM”, *Jurnal Jurist-Diction* 5, no. 2 (March, 2022): 441-464, <https://doi.org/10.20473/jd.v5i2.34877>.

²² Interview conducted on 26 April 2023.

From the considerations of *BPSK* and the Supreme Court above, a conclusion can be drawn. *BPSK* looks more at the actions of business actors that harm consumers, whether in the inclusion of standard clauses or forced withdrawal conducted by the finance company, while the Supreme Court focuses more on the basis of the cause of the dispute, namely the existence of an agreement. When adjudicating default disputes on consumer finance, the Supreme Court does not refer to other legal facts that occurred. The Supreme Court always assumes that *BPSK* has no authority to adjudicate default disputes in consumer finance on the basis of Supreme Court Jurisprudence Number 1/Yur/Perkons/2018. In the author's opinion, the Supreme Court should also examine other legal facts that occurred. This is because the dispute that occurs may contain elements of consumer protection as specified in the Consumer Protection Law. The next problem is that when a consumer finance agreement determines the place for dispute resolution, namely in the district court, *BPSK* still accepts and adjudicates the case.

The idea of legal certainty was originally introduced by Gustav Radbruch in his book entitled “*einführung in die rechtswissenschaften*”²³ The meaning of legal certainty according to Gustav Radbruch is:

First, that law is positive, meaning that positive law is legislation. Second, that the law is based on facts, meaning it is based on reality. Third, that facts shall be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement. Fourth, positive law shall not be easily changed.

The difference in views between the *BPSK* and the Supreme Court is also due to the unclear formulation of the Consumer Protection Law so that legal certainty as explained by Gustav Radbruch cannot yet be realized. Firstly, the broad definition of consumer disputes makes it less clear what kind of consumer disputes *BPSK* has the authority to adjudicate. The definition of consumer dispute is stated in Article 1 number 4 of Minister of Trade Regulation Number 72 of 2020 concerning the *BPSK*, namely disputes between Business Actors and Consumers who demand compensation for damage, defamation, and/or suffering losses due to consuming goods and/or utilizing the services produced or traded.²⁴ This is what causes *BPSK* to assume that all disputes between business actors and end consumers fall under its authority.

²³ Mario Julyano and Aditya Yuli Sulistyawan, “Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum”, *Jurnal Crepido* 1, no. 1 (July, 2019): 13-22, <https://doi.org/10.14710/crepido.1.1.13-22>.

²⁴ Minister of Trade Indonesia, “Regulation No. 72 of 2020 Regarding Consumer Dispute Settlement Agency” (2020).

The second is not explained in the Consumer Protection Law and Minister of Trade Regulation Number 72 of 2020 on what kind of losses that can be used as a basis for consumers to sue to *BPSK*. The value of losses suffered by consumers also does not have a definite benchmark. Thirdly, the absence of limiting limits on *BPSK*'s authority as stipulated in the Consumer Protection Law causes these differences in views. It is not explained in detail what kind of disputes fall under the authority of *BPSK* or the district court.

2. Limitations of *BPSK*'s Authority in Settling Default Disputes in Consumer Finance Based on the Theory of Legal Certainty

If we look at the elements of understanding consumers and business actors in the Consumer Protection Law, it appears that the Consumer Protection Law provides broad protection by providing legal protection for consumers of goods and/or services in general. This is because both the provisions and general explanations in the Consumer Protection Law do not regulate the limitations of the criteria for any goods or services regulated in the Consumer Protection Law. Agus Satory is of the view that the services referred to in The Consumer Protection Law also includes banking, finance and insurance services.²⁵

As previously explained, in carrying out its duties and authority, especially in adjudicating default disputes on consumer finance, *BPSK* refers to the Consumer Protection Law, Minister of Industry and Trade Decree Number 350/MPP/Kep/12/2001, Supreme Court Regulation Number 1 of 2006, and Minister of Trade Regulation Number 72 of 2020. As the basic regulation for consumer protection in Indonesia, the Consumer Protection Law has not been revised to date. This is also unfortunate for Mrs. Yudith Nitriasari²⁶ because reflecting on the increasingly dynamic business world, a Consumer Protection Law is needed that can keep up with the times. The Consumer Protection Law shall also provide legal certainty for consumers who expect quick and efficient dispute settlement at *BPSK*.

Disputes that occur in consumer finance can actually be settled internally, but consumer complaints are often not responded to by the finance company.²⁷ As one of the bodies that is easiest for consumers to reach to settle their disputes, there needs to be some changes to its legal basis as well as its institutions so that *BPSK* can provide legal certainty for consumers of finance services. The formulation contained in the Consumer Protection Law must be clear

²⁵ Agus Satory, "Perjanjian Baku dan Perlindungan Konsumen dalam Transaksi Bisnis Sektor Jasa Keuangan: Penerapan dan Implementasinya di Indonesia", *Padjadjaran Jurnal Ilmu Hukum* 2, no. 2 (August, 2015): 269-290, <https://doi.org/10.22304/pjih.v2n2.a4>.

²⁶ Interview conducted on 22 November 2022.

²⁷ J. Widijantoro, *et.al.*, *Hukum Perlindungan Konsumen Jasa Keuangan Di Era Otoritas Jasa Keuangan* (Yogyakarta: Cahaya Atma Pustaka, 2018), 93.

so that there are no mistakes for the parties in interpreting it or meaning as stated by Gustav Radbruch regarding the concept of legal certainty. It needs to be emphasized that only small amounts of material loss can be reported to *BPSK*. If the value of the loss suffered by the consumer is relatively large, the consumer shall bring the case to the district court. For example, as specified in Article 1 number 1 of Supreme Court Regulation Number 4 of 2019 where the value of losses that can be submitted in a simple lawsuit is a maximum of IDR 500,000,000. This is due to *BPSK*'s limitations in imposing sanctions. Then the definition of consumer dispute needs to be added to the Consumer Protection Law because so far the definition of consumer dispute is only contained in Ministerial Regulation which are juridically at a lower level than the law.

In the general explanation of the article regarding the meaning of consumer disputes, it is also necessary to explain what kinds of disputes are regulated in the Consumer Protection Law, whether default is also a consumer dispute, and if so, what are the criteria. In the general explanation regarding the meaning of consumer disputes, it is also necessary to explain that disputes arising from the implementation of an agreement which result in losses experienced by consumers include in consumer disputes regulated in this law. With this explanation, *BPSK* has a strong basis of authority to adjudicate default disputes, especially those that occur in consumer finance.

So far, in practice, as explained by Mrs. Yudith Nitriasari²⁸, *BPSK* in determining whether a dispute is a consumer dispute or not is only guided by the fact that in the dispute there is a final consumer who is aggrieved, so whether it is a dispute over an unlawful act or a breach of contract, it is *BPSK*'s authority to adjudicate it. When a consumer dispute handled by *BPSK* reaches the cassation stage, the Supreme Court also has a strong legal basis that *BPSK* has the authority to adjudicate disputes over default in consumer finance. Apart from that, the Supreme Court can also consider other legal facts that occurred as determined in the Consumer Protection Law, whether the rights of consumers or business actors have been violated, so that it does not immediately annul the *BPSK* decisions that have occurred so far in practice.

In this way, there is clarity regarding *BPSK*'s authority to adjudicate disputes over broken promises and also unlawful acts between business actors and consumers with minimal losses. Even though the breach of contract dispute complained by the consumer reaches the cassation stage, consumers still have hope that the dispute s/he faced was won by the Supreme

²⁸ Interview conducted on 22 November 2022.

Court. However, it should also be noted that the binding legal relationship between the finance company and the consumer is based on a finance agreement and an *accessoir* agreement. The consumer finance agreement is followed by a guarantee which is a legal way to secure the repayment of the loan or credit provided.²⁹ So *BPSK* also needs to pay attention to the clauses in it, especially the clause on the place of dispute settlement. When the consumer finance agreement between the parties has determined the place for dispute settlement, namely in the district court or other dispute settlement agencies, *BPSK* should refuse to adjudicate the dispute.

If the district court is appointed as the place for settling disputes, the absolute authority belongs to the district court, unless outside the terms agreed upon, the parties make another agreement to settle the dispute at *BPSK*. Dispute resolution through *BPSK* must be agreed upon by both parties as regulated in Article 45 paragraph (2) of the Consumer Protection Law, namely that consumer dispute resolution can be reached through court or outside court based on the voluntary choice of the parties to the dispute. It also needs to be made clear in the Consumer Protection Law that it is final and binding as regulated in Article 54 paragraph (3) of the Consumer Protection Law is only achieved when agreed by the parties. This is because there are legal remedies that can still be submitted by a party who is not satisfied with the *BPSK* decision, especially the arbitration decision.

Finally, it needs to be emphasized that *BPSK* decisions that can be appealed to the district court are only arbitration decisions. This is because these provisions are only regulated in the Supreme Court Regulations, so they need to be specified explicitly in the future Consumer Protection Law.

With the changes and additions to the Protection Law as described above, it is hoped that the Consumer Protection Law can provide legal certainty for the parties. The Supreme Court, in adjudicating default disputes on consumer finance at the cassation level, indirectly simply annulled that *BPSK* had exceeded its authority by adjudicating default disputes over the implementation of finance agreements. The Supreme Court must also be guided by the Consumer Protection Law, also when looking at other legal facts that occurred whether there were violations committed by business actors or consumers as specified in the Consumer Protection Law. *BPSK* needs to have its existence recognized as a body tasked with resolving consumer disputes because *BPSK* obtains its duties and authority from law. Especially *BPSK* is the body closest to finance consumers to complain about their disputes apart from the

²⁹ Junaidi, *Hukum Lembaga Pembiayaan* (Indramayu: Adab, 2022), 7.

district court because its principals are spread across several cities in Indonesia, including Yogyakarta.

D. Conclusion

Based on the above analysis regarding Authority Of Badan Penyelesaian Sengketa Konsumen Resolving Default Disputes In Consumer Financing, the following conclusions can be drawn, there are differences in views between the *BPSK* and the Supreme Court regarding the authority to settle default disputes in consumer finance due to differences in viewpoints in looking at default disputes in consumer finance. The Supreme Court, in adjudicating default disputes that occur in consumer finance, does not refer to the facts of another law that occurs based on the Consumer Protection Law, when a consumer finance agreement has determined the place for dispute settlement, namely in the district court, *BPSK* still accepts and adjudicates the case based on Article 4 of the Consumer Protection Law, the unclear definition of consumer dispute causes *BPSK* assumes that all disputes between business actors and final consumers fall under its authority, and there are no limiting limits to *BPSK*'s authority as determined in the Consumer Protection Law.

To ensure legal certainty as stated by Gustav Radbruch for consumers, changes and additions need to be made so that the limitations of *BPSK*'s authority become clear in the future. The definition of consumer dispute, which so far has only been included in ministerial regulations, needs to be added to the Consumer Protection Law. Then, in the general explanation regarding the meaning of consumer disputes, it is necessary to explain that disputes arising from the implementation of an agreement which result in losses experienced by consumers are included in consumer disputes regulated in this law. In the amendments to the Consumer Protection Law, it is also necessary to emphasize that only small amounts of material loss can be complained to *BPSK*. If the value of the loss experienced by the consumer is relatively large, the consumer shall bring the case to the district court. When the consumer finance agreement between the parties has determined the place for dispute resolution, namely in the district court or other dispute settlement agencies, *BPSK* should refuse to adjudicate the dispute. If the district court is appointed as the place for settling disputes, the absolute authority belongs to the district court, unless outside the terms agreed upon, the parties make another agreement to settle the dispute at *BPSK*.

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